INDEX TO SEPARATE APPENDIX

I

STATUTES

Fair Labor Standards Act of 1938, as amended (c. 676, 52 Stat. 1060; c. 736, 63 Stat. 910, 29 U. S. C. 201):

SEC. 3. [52 Stat. 1060] As used in this Act—

* * * * * * *

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

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SEC. 7. [63 Stat. 913]. * * *

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(c) In the case of an employer engaged in the first processing of milk, buttermilk,

whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into sirup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

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SEC. 13. (a) [63 Stat. 918] * * *.

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(6) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply

and storing of water for agricultural purposes;

* * * * *

(10) any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

* * * * *

"Portal-to-Portal" Act of 1947 (c. 52, 61 Stat. 89, 29 U. S. C. 251, 261):

SEC. 12. APPLICABILITY OF "AREA OF PRODUCTION" REGULATIONS.—No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of an activity engaged in by such employee prior to December 26, 1946, if such employer—

(1) was not so subject by reason of the definition of an "area of production", by a regulation of the Administrator of the Wage and Hour Division of the Department of Labor, which regulation was applicable at the time of performance of the

activity even though at that time the regulation was invalid; or

(2) would not have been so subject if the regulation signed on December 18, 1946 (Federal Register, Vol. 11, p. 14648) had been in force on and after October 24, 1938.

II

ADMINISTRATOR'S REGULATION

TEXT OF THE ADMINISTRATOR'S REGULATION DEFINING THE "AREA OF PRODUCTION"

(29 C. F. R. 536.2) (FEDERAL REGISTER, DECEMBER 25, 1946, 11 F. R. 14648, 13 F. R. 7347)

"Area of production" as used in section 13 (a) (10) of the Fair Labor Standards Act.—(a) An individual shall be regarded as employed in the "area of production" within the meaning of section 13 (a) (10) of the Fair Labor Standards Act in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(1) If the establishment where he is employed is located in the open country or in a rural community and 95 percent of the commodities on which such operations are performed by the establishment come from normal rural sources of supply located not more than the following air line distances from the establishment:

(i) With respect to the ginning of cotton—10 miles;

(ii) With respect to operations on fresh fruits and vegetables—15 miles;

(iii) With respect to the storing of cotton and any operations on commodities not otherwise specified in this subsection—20 miles;

(iv) With respect to the compressing and compress-warehousing of cotton, and operations on tobacco, grain, soybeans, poultry or eggs—50 miles.

(b) For the purposes of this section:

(1) "Open country or rural community" shall not include any city, town or urban place of 2,500 or greater population or any area within:

(i) One air-line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000 or

(ii) Three air-line miles of any city, town or urban place with a population of 50,000 up to but not including 500,000, or

(iii) Five air-line miles of any city with a population of 500,000 or greater,

according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or

other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community, provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

New York, New York

In the matter of the redefinition of the "area of production" as used in sections 7 (c) and 13

(a) (10) of the Fair Labor Standards Act of 1938.

FINDINGS OF THE ADMINISTRATOR DECEMBER 18, 1946

These findings are primarily intended to provide a statement of the major considerations entering into the promulgation of the regulations redefining "area of production." The redefinition of the "area of production" was undertaken pursuant to the order of the United States Supreme Court in the case of *Addison et al. v. Holly Hill Fruit Products, Inc.* (322 U. S. 607). The specific issue before the Court in that case was the validity of the following definition contained in Regulations Part 536 issued by the Wage and Hour Division:

> An individual shall be regarded as employed in the "area of production" within the meaning of section 13 (a) (10) * * * (1) if he performs those operations on materials all of which come from farms in the general vicinity of the establishment where he is employed and the number of employees engaged in those operations in that establishment does not exceed seven (29 C. F. R. (1940 Supp.) 536.2).[1]

The Supreme Court held these regulations to be invalid on the ground that the "area of production" could not be defined in terms of the

[1] A later revision of this definition increased the permissible number of employees from seven to ten. 29 C. F. R. (1941 Supp.) 536.2.

number of employees in the plant, and remanded the case to the District Court "with instructions to hold it until the Administrator, by making a valid determination of the area with all deliberate speed, acts within the authority given him by Congress." The Court noted the Congressional intent to distinguish between rural communities and the urban centers and indicated in the following language the general principles for drafting a new definition:

> The textual meaning of "area of production" is thus reinforced by its context: "area" calls for delimitation of territory in relation to the complicated economic factors that operate between agricultural labor conditions and the labor market of enterprises concerned with agricultural commodities and more or less near their production. The phrase is the most apt designation of a zone within which economic influences may be deemed to operate and outside of which they lose their force. In view, however, of the variety of agricultural conditions and industries throughout the country the bounds of these areas could not be defined by Congress itself. Neither was it deemed wise to leave such economic determination to the contingencies and inevitable diversities of litigation. And so Congress left the boundary-making to the experienced and informed judgment of the Administrator. Thereby Congress gave the Administrator appropriate discretion to assess all the factors relevant to

the subject matter, that is the fixing of minimum wages and maximum hours.

In delimiting the area the Administrator may properly weigh and synthesize all such factors.

Studies were initiated immediately after the Court's decision with a view to promulgating a new definition along the lines indicated in the opinion. Numerous conferences were held throughout the country with representatives of labor and of the industries involved. Economic reports dealing with commodities affected were prepared, and a large amount of economic data assembled. More economic material was presented at the hearings. Six formal hearings were held between December 1944 and March 1945 for the industries concerned with the following commodities: (1) fresh fruits and vegetables; (2) cotton; (3) tobacco; (4) grain; seeds; dry edible beans and dry edible peas; (5) dairy products, poultry and eggs; and (6) miscellaneous agricultural and horticultural commodities not covered by the other hearings. One or more definitions were proposed for discussion at each of these hearings, but the scope of the hearing included consideration of any other proposals that might be presented.

The invalidated definition had avoided most of the economic discriminations inherent in an exemption of this kind by restricting the exemption to small establishments whose effect on the labor

market and labor standards is negligible. After the Supreme Court's decision, a great variety of possible criteria which could be used in defining the "area of production" for different agricultural commodities were explored. It was apparent, however, from numerous studies made by the Division that no valid criteria which could be developed would result in as little economic dislocation as had been experienced under the invalidated definition. The best available criteria for delimiting "territory in relation to the complicated economic factors that operate between agricultural labor conditions and the labor market of enterprises concerned with agricultural commodities and more or less near their production," and for distinguishing between "rural-agricultural" and "urban-industrial" conditions in accordance with the intent of Congress were found to be: (1) the distances from which the enterprises obtained the commodities on which they performed the operations named in the statute; and (2) the nature of the community in which they were located, as indicated generally by a population test.

A definition of "area of production" employing such "population-mileage" criteria had been in effect for a period of more than a year prior to October 1, 1940. This definition included within the area of production any individual performing the specified operations "on materials all of which come from farms in the immediate locality of the establishment where he is employed and the estab-

lishment is located in the open country or in a rural community." "Immediate locality" was limited to distances of not more than 10 miles, and "open country or rural community" was defined so as to exclude any town or city of 2,500 or greater population according to the last available United States Census. This definition was abandoned in favor of the definition containing an employee limitation when industry representatives protested that it resulted in numerous competitive inequalities and economic discriminations between establishments located within the "area of production" as so defined, and those outside the "area of production."

Tests based on distance and population were the bases of all but one of the definitions proposed for discussion at the hearings. An alternative proposal for fruits and vegetables substituted for the mileage criterion the requirement that the establishment must be located in a county in which the total of the acreage harvested in all fruits and vegetables is 20 percent or more of the crop land harvested. It was not feasible, however, to develop suitable criteria of this type for other commodities. Such a test, moreover, did not appear to take into account some of the economic factors involved in defining the area of production. For these reasons, and because of other considerations, the definitions proposed for hearings held subsequent to the one for fruits and vegetables did not contain similar proposals. It was finally decided

not to use this criterion as a part of the definition, but to take account of the economic factors reflected by such a test in selecting the pertinent mileages for each group of commodities.

The definition of "area of production" proposed in the notices of hearing for the different commodities were drawn with a view to carrying out insofar as possible the following objectives: (1) to distinguish generally between establishments operating under "rural-agricultural" conditions and those subject to "urban-industrial" conditions; (2) to indicate for each agricultural commodity or group of agricultural commodities the zones which would be deemed to be "more or less near" the production of the particular agricultural commodity. Efforts were also directed toward eliminating insofar as possible within the framework of the congressional intent and the economic and legal considerations involved, the most serious criticisms of the previous definition which had employed population and mileage as criteria for exemption.

One of the most frequently urged of the objections to the "10-mile 2,500-population" definition had been that by failing to treat all establishments alike—by denying the exemption to all of them or exempting them all—it placed some establishments at a competitive disadvantage with respect to others. Such discrimination, however, seems to be inherent in the statute itself, which did not exempt all employees in the industries involved,

but only those employed "within the area of production." It is apparent that only a definition which would have the effect of exempting all or none of the employees would entirely avoid this discrimination. That such a definition would be invalid is evident from the statement of the Supreme Court in the Holly Hill case that "to hold that all individuals 'engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter, or other dairy products' are exempt from the operation of the Act is obviously to fly in the face of congressional purpose. The Act exempts some but not all of the employees engaged in these industries . . ." It is obvious therefore that some discrimination, in the sense that some establishments will not meet the test for exemption, must inevitably result from any valid definition.[1]

[1] Although this could not be taken into consideration in formulating the definition, it was apparent from the evidence presented at the hearings that such discrimination had become largely academic in nature. Representatives of industry after industry testified that the minimum wages paid exceed the minimum currently required by the Fair Labor Standards Act and that consequently the industry would not be required to increase wages by reason of failure to qualify for exemption under section 13 (a) (10). There was testimony to the effect that the establishments concerned would incur some cost for overtime if they failed to qualify for exemption. However, it was clear that relatively few establishments could take full advantage of the overtime exemption provided in the "area of production" sections of the Act,

The definitions proposed for consideration at the hearings, while adopting population and distance from which commodities are received as basic criteria for exemption, which included modifying factors, were designed to reduce the impact of discriminations that had resulted from the "10-mile, 2,500-population" definition previously in effect. The 2,500-population test was retained in the definitions proposed for discussion at the hearings despite previous objections to it because it came closer to accomplishing the objective for which it is intended than any other known test, and because it has been the dividing line between rural and urban communities used for many years by the Bureau of the Census and other agencies of government. One serious objection related to the competitive discriminations which arose in cases where plants located within the city limits of a town of more than 2,500 population were not exempt, while some of their competitors who happened to be located across the boundary line of the same town were exempt. In many instances, it could obviously not be said that the boundary of the town marked the dividing line between estab-

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in view of the unionization which had taken place in the last few years and the fact that most affected industries have 14 weeks, 28 weeks and in some instances year-round exemptions from overtime under other provisions of the Act. Rising wage rates and the spreading practice of paying premium rates of overtime since the hearings have reduced even further the number of establishments that could derive any material benefit from either the minimum wage or overtime exemptions provided for plants in the area of production.

lishments operating under rural rather than urban labor conditions. Instead it appeared clearly that the influence of the town on the market for labor, as well as on wage levels and related conditions, extends for some distance into the surrounding area. To minimize the discrimination resulting from this particular type of competitive situation, the definitions of the terms "open country" and "rural community" in the proposed definitions included areas surrounding the towns as well as the towns. For purposes of the hearings the size of the surrounding areas assumed to be within the influence of the urban community and hence excluded from the definition of rural community or open country ranged from 3 miles to 20 miles, depending upon the population of the town or city.

The objections to 10 miles as a universal distance denoting nearness to source of supply were also recognized in the proposed definitions by (1) varying the allowable distances on the basis of population density for some commodities, permitting greater distances in the more sparsely populated areas and shorter distances in the more thickly populated areas; and (2) increasing permissible distances for most commodities to mileages believed to be more consistent with the drawing radius of plants operating within their own producing areas, while at the same time giving due weight to the many complicated economic factors that operate between agricultural labor

conditions and the labor market of enterprises concerned with agricultural commodities and more or less near their production." Thus, in addition to the other requirements, mileages varying from ten miles for some agricultural commodities under certain conditions to as much as 50 miles for other commodities were proposed for consideration at the hearings.

Another objection to the previous "population-mileage" definition was the requirement that *all* of the commodities received by the exempt establishment had to come from farms within the specified distance from the establishment. As a result of this requirement, it had been pointed out, a farmer located in an area remote from an exempt plant might be deprived of the opportunity of marketing his products, since the exempt establishment would lose its exemption if it handled his crop. The validity of this objection was recognized in the definitions proposed for discussion at the hearings by including a provision permitting 5 percent of the commodities to come from beyond the specified mileages without defeating the exemption.

Alternative proposals submitted at the hearings or in post-hearing briefs by employer organizations were quite generally designed to exempt all or practically all establishments in the particular industry or branch of the industry represented. In general, the employer-proposed definitions did not differentiate between rural-agricultural and

urban-industrial conditions. A number of the proposals, moreover, were of at least doubtful legality when considered in the light of the majority opinion in the Holly Hill case. One type of definition proposed by industry representatives would have had the effect merely of striking the words "area of production" from the Act. Others merely named all the counties in which any appreciable amount of the commodity is grown. These proposed definitions would have exempted everyone engaged in the named operations with possible exceptions in instances which seem to be extremely rare. Some organizations adopted the general criterion of distances from which commodities are received, but proposed mileages so broad as to include all establishments within the exemption. One novel but hardly practicable proposal was made that the Administrator refrain from defining area of production, leaving the question to be decided by the courts in each individual instance.

Some labor representatives on the other hand proposed definitions which they admitted frankly were designed to deny the exemption to all but a very few establishments. One proposal made by labor representatives adopted the population-mileage criterion, but restricted the area from which the establishment could draw its commodities to 5 miles, and included within the exemption only establishments which were in the open country or in rural communities with popu-

lations of less than 500, and which had annual sales of less than $20,000. One labor organization proposed that 500 population and 2 miles be the test. Another labor proposal would have required the Administrator to determine in each individual case whether the establishment was in the area of production and would have made the tests for exemption so restrictive that probably no establishment could have qualified.

The objections to the definitions proposed for discussion at the hearings were in general directed to the fact that they would result in discriminations because they did not have the effect of exempting all or a sufficiently large proportion of the establishments in a particular industry or part of an industry represented at the hearing. Much of the testimony at the hearings was directed to showing that particular establishments or groups of establishments in one or another sections of the country would not qualify for exemption under the proposals contained in the notices of hearing. The reasons why such effects are inevitable under any valid definition have been indicated above, and no valid method of completely eliminating them appears to be possible. To the extent possible within the legal and economic limitations of the problem, the criticisms and suggestions which had merit have been taken into consideration in formulating the final definitions.

That portion of the proposed definitions which defined "open country" or "rural community" in terms of a population of less than 2,500 was also attacked. It was argued by some that the population of a community does not determine whether it is agricultural or industrial in character, and examples were cited of towns of more than 2,500 which were said to be predominantly agricultural in character, and of towns of less than 2,500 which were obviously industrial. However, no better criterion for accomplishing the objective of distinguishing establishments subject to "urban-industrial" conditions from those under the influence of "rural-agricultural" conditions was developed at the hearings. Independent investigation by the staff of the Wage and Hour Division, as well as consultation with experts of the Department of Agriculture and other Government bureaus, moreover, failed to develop any administratively feasible substitute for population as a test of urbanization and industrialization. In the course of the investigation and study of this problem, consideration was given to a number of such possible alternatives to the population test as the major source of income of the town (e. g., whether agricultural or industrial) and various types of criteria indicating the extent of industrial employment in relation to employment in the handling and processing of agricultural commodities, but all were found to be impracticable and were

abandoned. An analysis of all the available data indicated, however, that while the size of a town is not a perfect criterion of its urban or industrial character, it is nevertheless the best available test, and leads to results which in general are accurate enough to warrant its adoption.

Even those who conceded the propriety of using a population test to distinguish plants operating under "rural-agricultural" rather than "urban-industrial" labor conditions argued, however, that a population of 2,500 was not the proper dividing line. Representatives of industry attacked the figure 2,500 as too small, while labor representatives insisted that it was too large. Examples were given of communities with populations considerably in excess of 2,500, in which, it was contended, labor conditions were not different from those in towns of less than 2,500. Examples were cited of towns of larger population than 2,500 which were said to be predominantly "agricultural" in the sense that they were dependent upon the surrounding agricultural areas for their economic existence and the principal activities were related to the handling or processing of agricultural commodities or of otherwise serving the farmers in the surrounding community. Representatives of employer groups advanced proposals that the population line be drawn at various figures ranging up to 100,000 or more. Some employer representatives suggested that only terminal or market cities be excluded from the area

of production. At the other extreme, labor representatives pointed to the wide-spread industrialization in towns of less than 2,500 and proposed that establishments be considered outside the "area of production" if they were located in communities with populations in excess of 500 persons.

An analysis of the proposals advanced by representatives of employer groups at the hearings as substitutes for the proposed 2,500 population test, indicates that in most instances they were designed to exempt all or practically all of the establishments represented by the particular group making the proposal. While the 2,500 population test was criticized by employer representatives because it excluded some towns of larger population which were said to be agricultural in character, the alternatives proposed by them would have had the equally objectionable effect of including within the area of production an even greater number of clearly industrial towns. The proposal of labor representatives that the dividing line be drawn at communities with populations of 500 persons would have excluded all of the urban industrial communities from the area of production, but would also have excluded a disproportionate number of truly rural and agricultural communities.

It seems reasonable to conclude from the record and all the available evidence that the tests proposed at the hearings as substitutes for the 2,500

population criterion are subject to at least as many objections as have been levied against the 2,500 population test. Although it is clear that any line attempting to distinguish between "urban-industrial" and "rural-agricultural" communities on the basis of population can at best be only an approximation, it is equally clear that none of the proposals advanced at the hearing would accomplish the objectives of such a test with as much accuracy as the 2,500 population test. As a class, places of 2,500 population or more are predominantly industrial, while places with populations of less than 2,500 are predominantly agricultural. A population limit of 2,500, moreover, has for over 35 years been the official dividing line between "rural" and "urban" employed by the Bureau of the Census in its studies. This dividing line has also been accepted and used in studies made by the Bureau of Agricultural Economics, the Federal Emergency Relief Administration, the Works Progress Administration and other government agencies. It has furnished the definition of "rural" communities which has been the basis of studies of rural and urban communities by many sociologists. It has been incorporated into statute by the Congress of the United States in special legislation for rural communities.[1] To a very great extent the handling and

[1] See, for example, 30 Stat. 356; 40 Stat. 1189, "an act appropriating funds for the construction of rural post roads." On the other hand the Rural Electrification Act (7 U. S. C. A.

processing of agricultural and horticultural commodities is carried on in the open country or in towns of less than 2,500. For example, only about 10% of grain elevators are located in towns of 2,500 or more. Only about 11% of cotton gins are located in such populated places. About two-thirds of all fresh fruit and vegetable canning and packing, cheese manufacturing and poultry and egg assembling are carried on in the open country or in towns of 2,500 or less.

On the basis of all the evidence, it is my conclusion that a population test of 2,500, while not drawing a line between "urban-industrial" and "rural-agricultural" conditions with a fine precision, will come as close to accomplishing this objective as it is possible to come in a general rule applicable to many situations.

Objections were also voiced at the hearings against those portions of the proposed definitions which excluded from the area of production establishments located within specified distances of population centers, the distance increasing with the population of the city or town. Under the proposed definitions, establishments were excluded from the "area of production" if they were located within 3 miles of towns with populations between 2,500 and 10,000, 6 miles from towns of

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Sec. 203) defines "rural area" as "any area of the United States not included within the boundaries of any city, village or borough having a population in excess of fifteen hundred inhabitants. . . ."

10,000 to 25,000, 10 miles from cities between 25,000 and 100,000 and 20 miles from cities of 100,000 population or more. One purpose of this requirement, it will be recalled, was to meet one of the objections raised to the "10-mile 2,500-population" definition which had previously been in effect; that it frequently discriminated against employers located within the limits of the town while giving a competitive advantage to employers who moved their establishments just beyond the boundary in order to avoid paying municipal taxes or for other reasons. It was apparent, moreover, that the influence of an urban community does not end at the political boundary, but extends for some distance beyond it into the surrounding area.[1] The distance over which this influence extends depends upon a variety of factors, but is related with a fair degree of accuracy to the population of the city. The rationale for such a test appears to have been supported by the

[1] This has long been recognized by the Bureau of the Census in its demarcation of metropolitan districts to include certain settled areas contiguous to cities. A district of this type, the Bureau found "tends to be a more or less integrated area with common economic, social and often, administrative interests." Serious consideration was given to the adoption of surrounding areas of these metropolitan districts in lieu of the bands proposed at the hearings. This was abandoned in favor of specific mileage bands, however, because the areas included within these metropolitan districts reflect the influence of some factors which are not pertinent to the problem of defining "area of production" and also because no data are available with respect to metropolitan districts for cities of less than 50,000 population. See *Census of Population*, 1940.

facts, which indicated that it would tend to eliminate competitive discriminations of the most serious kind, by excluding from the "area of production" establishments which are subject to "urban-industrial" labor conditions although not located within political boundaries of cities or towns. The testimony at the hearings indicated, however, that the distances specified in the proposed definitions were greater than was necessary to accomplish the desired purpose, since they had the effect of disqualifying some establishments which were too far away from the town to be within its influence. Census data on metropolitan districts and other available information, moreover, tended to support this testimony. The evidence indicated that the urban influences tended to extend roughly one mile outside of the limits of cities with populations between 2,500 and 50,000, three miles from cities between 50,000 and 500,000, and five miles from cities of 500,000 or over. The definition of "area of production" which has been adopted therefore excludes establishments located within such distances of cities, towns or urban places with the specified populations. These distances tend to reflect the direct influence of the urban community upon the surrounding area.

The Congressional purpose of restricting the exemption to establishments located "more or less near" the production of the agricultural commodity has been recognized in the definitions of

"area of production" adopted since the effective date of the Act. The test of nearness to the farms on which the commodities are grown was made a part of the very first definition of "area of production" issued in October 1938, in the requirement that the establishment must receive its agricultural or horticultural commodities "from farms in the immediate locality." Special definitions for dry edible beans and for Puerto Rican leaf tobacco recognized this principle in the requirement that the exemption apply only to employees at the place where these products were first assembled from nearby farms. A later definition for fresh fruits and vegetables defined the term "immediate locality" more specifically in terms of a distance of 10 miles or less. In 1939, "immediate locality" was broadened to "general vicinity," but no exact definition of the term was included within the regulations defining "area of production." Court decisions holding parts of the definition of "area of production" to be invalid did not upset that portion of the definition which required that all commodities come from "the general vicinity" of the establishment in order that the employees qualify for exemption. The provision of one of the previous definitions restricting the distance to 10 miles and requiring that *all* of the commodities come from within that distance seems to have been approved as valid by the United States Supreme Court in the *Holly Hill* case. Thus the courts appear to have sus-

tained the validity of employing a test that related the proximity of the establishment to the farms producing the commodities it handles.

Nevertheless, the use of a mileage criterion was opposed by some groups at the hearings, particularly those having members who did not operate entirely within one producing area but reached out over great distances to obtain the materials needed to operate their plants. Other groups argued that a mileage criterion could be employed only if it were great enough to include all establishments. For example, the representative of the cotton compressors opposed the use of a mileage criterion, pointing out that many compress operators receive their cotton from very great distances, and taking the position that a cotton compress should be entitled to the exemption even if it received cotton from a foreign country. The representatives of the tobacco redrying industry also opposed a mileage criterion unless the mileage used was a "large figure." The testimony disclosed that some redrying plants located in the tobacco growing region of North Carolina receive tobacco for redrying from producing areas in the State of Georgia. Consequently, this group was opposed to any mileage test which would not exempt North Carolina plants reaching into Georgia for their tobacco.

An analysis of the available data indicates quite clearly that the longest hauls of agricultural or horticultural commodities normally occur when

the commodity is moved to an establishment which has not been located principally to serve the nearby farms, but for reasons involving nearness to terminal facilities, markets, labor supply or other such considerations. The most striking instances of this kind of establishment are the large cotton compresses located in cities having port facilities which are principally established there for convenience in handling cotton for water transportation and the export trade. Such compresses reach out over hundreds of miles for the cotton handled by them, and, incidentally, generally operate in large cities under urban-industrial conditions. Their relationship to the farmer and to agriculture is considerably more remote, for example, than that of the cotton gin, the warehouses, and even the inland compresses. Some establishments in other industries or branches handling agricultural commodities also reach out beyond their immediate producing areas and obtain greater or lesser amounts of the commodity they handle from other producing areas. The number of such establishments varies with the different commodities or industries and may vary in different sections of the country and from time to time.

The distances from which establishments receive their commodities reflect to varying degrees the influence of significant economic factors, many of which are pertinent to the complex task of de-

termining the kinds of establishments that should or should not be exempt from the minimum wage or overtime provisions of the Act. Consequently, one of the major tests adopted for delimiting the zone within which the pertinent economic influences may be deemed to operate and outside of which they lose their force, is the distance from which establishments in the various industries receive the commodities upon which they perform the operations specified in sections 7 (c) and 13 (a) (10) of the Act.

The selection of appropriate distances for the different commodities and groups of commodities has been no easy task, and was accomplished only after carefully weighing and synthesizing a large variety of complicated economic factors. Among the many factors taken into consideration were the following: the kind of crop; the distances from which the establishments in each industry receive the agricultural or horticultural commodities upon which they perform the operations specified in the pertinent sections of the Act; the geography and topography of the various sections of the country in which the different commodities are normally produced; the location of the plants within these areas; the concentration of cultivation of the different commodities in various sections of the country; the pattern of concentration of agricultural production with respect to the location of the establishment; differences in prac-

tice as between single crop areas and diversified farming areas; the perishability of the commodities received; the extent to which the plants deal with a single commodity rather than a variety of commodities; the nature of the operations performed on the commodities received, including the degree of industrialization of the various operations; the number of hands or operations through which the particular commodity has moved since leaving the farm, including the possibility of passing increased labor costs back to the farmer; the marketing practices of the particular industries, and the wage rates paid, and overtime practices in the various communities concerned with particular commodities.

On the basis of all the evidence, it is my conclusion that the operating distances which may be considered "more or less near" the establishment with respect to particular industries or commodities and which (to the extent that this can be accomplished by a distance test) most nearly delimit the zones within which the pertinent economic influences operate, are as follows:

(a) the ginning of cotton—10 miles;

(b) all operations on fresh fruits and vegetables—15 miles;

(c) the storing of cotton and any operations on commodities not otherwise specified—20 miles;

(d) the compressing and compress-warehousing of cotton and operations on

tobacco (except Puerto Rican leaf tobacco[1]), grain, soybeans, poultry or eggs—
50 miles.

In arriving at these distances the weighing of the many factors had to be accomplished with the best data available for the particular industries. Some grouping and averaging was necessary, moreover, since it was not feasible to develop one or more separate distance requirements for each of approximately 300 affected commodities. It is my considered opinion, nevertheless, that the distances specified in the definitions will in general accomplish the required objectives.

Complicating the task of determining the appropriate distances from the establishments to the farms on which the commodities were produced was the fact that some of the operations specified in the statute are two or more stages removed from the farm. At each successive stage it is increasingly difficult to identify the farms on which the commodities had their origin. At each successive stage, moreover, the commodities may be expected to be further removed from the farms on which they were grown. Some allow-

[1] The definition of the "area of production" of Puerto Rican leaf tobacco involves a number of very complex special problems, which make it desirable to consider that commodity separately. Consequently, the previous definition will be left in effect until such time as a separate hearing can be held with respect to it.

ance was made for these factors in selecting the particular distances applicable to each commodity or group of commodities. It was also found necessary, however, to develop some method of making reasonably sure that commodities which are received from other handlers or processors rather than directly from farms were produced on farms more or less near the establishment. This might be approximated by a requirement that the establishment from which the commodities came must also be operating within the "area of production" as defined. It was not considered practicable to establish such a requirement in view of the difficulty of ascertaining the facts regarding the operations of the supplying establishments. Available evidence indicated, however, that the supplying establishments which were located in the open country or in rural communities were more likely to receive the commodities from nearby farms than establishments not so located. The "distance" test was therefore drafted in terms of receipts from "normal rural sources of supply" which have been defined to include certain other establishments as well as farms. Thus, the receipt of commodities in accordance with this test may be established by showing that the commodities were received from any of the following sources within the specified distances: (1) farms; (2) farm assemblers or other customary supplying establishments (a) located in the open country or in a rural community, or (b) not located in

the open country or in a rural community provided it is shown that the commodities actually originated on farms within the specified distances from the establishment claiming the exemption.

A tolerance of 5% has been included in the definition in order to allow the exemption to apply despite receipt of an occasional shipment from a remote farmer or from an urban source, or a source which cannot for one reason or another be determined. This tolerance applies to the total combined receipts for the period tested. An establishment may therefore qualify even if the receipts of one or more commodities from disqualifying sources or distances exceed 5%, provided that the total receipts from disqualifying sources or distances do not exceed 5% of the total receipts of all commodities.

The period for determining whether 95% of agricultural or horticultural commodities are received from normal rural sources of supply within the specified distances will ordinarily be the last preceding calendar month of operation in which the establishment has operated for at least two workweeks. In the case of establishments performing the specified operations on the particular commodities for the first time, the period will be the total time during which the establishment has so operated, until the required calendar month of operations has elapsed. The preceding calendar month is considered to be the most practicable period for applying the test. It provides a more

stable basis for the test than a weekly period, yet will reflect the nature of current operations with much greater accuracy than would the preceding calendar year, which was the period contained in the definitions proposed for the hearings.

On the basis of the considerations discussed above, it is my conclusion that the definitions of "area of production" which will best carry out the objectives of Congress as indicated in the legislative history of sections 7 (c) and 13 (a) (10) of the Fair Labor Standards Act, and which, to use the language of the Supreme Court, will accomplish the appropriate "delimitation of territory in relation to the complicated economic factors that operate between agricultural labor conditions and the labor market of enterprises concerned with agricultural commodities and more or less near their production," are as follows:[1]

"Area of Production" as used in Section 7 (c) of the Fair Labor Standards Act

(a) An employer shall be regarded as engaged in the first processing of any agricultural or horticultural commodity during seasonal operations within the "area of production" within the meaning of Section 7 (c) if he is so engaged in an establishment which is located in the open country or in a rural community and in which such first processing is performed on commodi-

[1] The special definition for Puerto Rican leaf tobacco is not set out here since no change has been made. See note page 31, supra.

ties 95% of which come from normal rural sources of supply located not more than the following air line distances from the establishment:

(1) with respect to grain, soybeans, eggs, or tobacco (other than Puerto Rican leaf tobacco)—50 miles;

(2) with respect to any other agricultural or horticultural commodities—20 miles.

(b) For the purposes of this regulation:

(1) "Open country or rural community" shall not include any city, town or urban place of 2,500 or greater population or any area within

one air line mile of any city, town, or urban place with a population of 2,500 up to, but not including 50,000 or

three air line miles of any city, town, or urban place with a population of 50,000 up to but not including 500,000 or

five air line miles of any city with a population of 500,000 or greater

according to the latest available United States Censuses.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii)

from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95% of the agricultural or horticultural commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

"Area of Production" as used in section 13 (a) (10) of the Fair Labor Standards Act

(a) An individual shall be regarded as employed in the "area of production" within the meaning of Section 13 (a) (10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, prepar-

ing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(1) if the establishment where he is employed is located in the open country or in a rural community and 95 percent of the commodities on which such operations are performed by the establishment come from normal rural sources of supply located not more than the following air line distances from the establishment:

(i) with respect to the ginning of cotton—10 miles;

(ii) with respect to operations on fresh fruits and vegetables—15 miles;

(iii) with respect to the storing of cotton and any operations on commodities not otherwise specified in this subsection—20 miles;

(iv) with respect to the compressing and compress-warehousing of cotton, and operations on tobacco (other than Puerto Rican leaf tobacco), grain, soybeans, poultry or eggs—50 miles.

* * * * *

(b) For the purposes of this regulation:

(1) "Open country or rural community" shall not include any city, town, or urban place of 2,500 or greater population or any area within

one air line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000 or

three air line miles of any city, town or urban place with a population of 50,000 up to but not including 500,000, or
five air line miles of any city with a population of 500,000 or greater

according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply

within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

* * * * * *

In concluding this explanation of the considerations entering into the definition of the area of production, I want to make it clear that I am far from satisfied with the definition since employers engaged in the same activities and employees engaged in the same type of work will have unequal rights and obligations under the Act. Such results are unfortunately unavoidable since they arise from the language and theory of this section of the statute itself. In drafting the sections of the Act dealing with "area of production" Congress did not define the exact scope of the exemption, and delegated the task of defining it to the Administrator. It is clear that Congress intended to exempt only those establishments performing the specified operations within the area of production, while leaving within the scope of the minimum wage and overtime provisions of the Act those establishments performing the same operations outside of the area of production, and consequently that some economic discrimination as between establishments within the exemption and those outside of it was also

within the intent of Congress. I am frank to say that this economic discrimination leading only to competitive inequalities is not only adminstratively very difficult but basically unfair and seems to me unsound public policy. Since the previous definition which to a considerable degree minimized these inequalities has been held invalid it is obvious that the only satisfactory solution is a legislative revision of sections 7 (c) and 13 (a) (10) of the Act. I have elsewhere indicated my views on this and I hope the Congress will take quick action. In the meantime I can only do my immediate duty in carrying out conscientiously to the best of my ability the mandate laid upon me by the Congress.

(S) L. METCALFE WALLING,
Administrator.

December 18, 1946.

III

LEGISLATIVE HISTORY OF SECTIONS 3 (F), 13 (A) (6), AND 13 (A) (10) OF THE FAIR LABOR STANDARDS ACT OF 1938

The purpose of this portion of the Appendix is to trace the legislative history of Sections 3 (f), 13 (a) (6), 13 (a) (10), and the provisions relating to the term and concept "area of production" which is found in Section 13 (a) (10) of the Fair Labor Standards Act.

1. *S. 2475, as introduced in the Senate on May 24, 1937, and considered at the hearings*

For convenience, this discussion will refer only to S. 2475, although a companion bill containing substantially the same terms was introduced in the House at the same time.

As introduced, S. 2475 contained no provision using the words "area of production." The only provisions relating to agriculture were in Sections 2 (a) (7) and 19. Section 2 (a) (7) defined "employee" as not including "any person employed * * * as an agricultural laborer as such terms are defined and delimited by regulations of the Board." Section 19 conferred authority on the Board to make regulations, among other things, defining and delimiting employment in which persons are deemed to be employed as agricultural laborers.

Joint hearings of the bill were held before the Senate Committee on Education and Labor and the House Committee on Labor, June 2, 1937, to June 22, 1937.

At the hearings, various witnesses urged that some allowance be made with respect to the maximum hours provision of the bill for employees engaged in handling, packing, processing, etc., perishable fruits, vegetables, or fishery products (Hearings, pp. 152, 373, 967, 1059, 1220).

Several witnesses urged that the agricultural exemption in the bill be broadened. Mr. Horace

Herr, representing the National League of Wholesale Fresh Fruit and Vegetable Distributors, urged that Congress should draft the formula for drawing the line between agricultural and industrial activities. He stated:

> In section 2 (a), in connection with the definition of "employee," in paragraph 7, lines 3 to 11, page 4, the question is raised as to whether the Board should decide where the line should be drawn between agricultural labor and labor within the scope of the act, or Congress should draw the line. Is it the congressional intent that this program shall be as inclusive as possible or that its application should be restricted so as to impose none of its obligations upon employers engaged in activities directly affecting agriculture or inseparably intertwined with agriculture in the marketing processes? It may be that wherever the line is drawn, some injustices may result both to the employees, on the exemption side of the line, and to the employers, on the inclusion side of the line, the injustices to the latter resulting from the labor-cost differential. This question is of some importance in this industry, where the commodities move in their natural state, where certain handling operations are dictated by the highly perishable character of the commodities, and where actual ownership, to a substantial extent, remains with the producer until the commodities are bought by the retail outlet; when the cost of grading, packing, loading

for shipment, storage, and other marketing expense is charged back to the grower. There is involved in this question the cooperative packing plants and marketing associations and the movement of commodities, such as apples, into and out of storage. In the Social Security Act, agricultural labor is exempt and the definition of agricultural labor rests with the Commissioner of Internal Revenue. There has been considerable pressure to liberalize the definition. In the [wholesale] fruit and vegetable [distribution industry] code, as approved by both N. R. A. and the Agricultural Adjustment Administration, the line was drawn at the point where the commodity was on board the transportation facility, the code language being as follows:

"The industry as defined shall not include the production nor preparation, assembling, or loading at point of production of commodities for shipment."

It would seem that fixing the limit on agricultural activities, in a program of this kind, so directly relates to the national policy for agriculture, that the Congress, rather than the Labor Standards Board, should draft the formula for the dividing line. The Congress, at least, should say whether the doubt is to be resolved in favor of the workers or in favor of the farmers (Hearings, pp. 1002–1003).

Mr. John H. Clippinger, representing the same organization, also urged that the bill be amended so as to draw a clear line of demarcation between

an agricultural and nonagricultural laborer so as to avoid confusion resulting from the definition of agricultural laborer under the Social Security Act (Hearings, p. 1064).

Mr. Samuel Fraser, representing the International Apple Association, objected to the provisions of the bill which empowered the Board to define agricultural laborer. He contended that—

> All of the costs and charges of packing, packaging, washing, grading, conservation, putting the commodities on board some transportation agency for transportation to market, in the end come squarely out of the pocket of the grower (Hearings, p. 1084).

He suggested the inclusion in the bill of the following definition of agricultural labor:

> For the purpose of this act, the term "agricultural labor" includes all employees engaged in the planting, growing, spraying, harvesting, preparing for market, packing, conserving, processing, transporting, and marketing of fresh fruits and vegetables, and their delivery to storage or to a carrier for transportation to market, no matter by whom employed (Hearings, p. 1096).

Mr. W. S. Campfield, representing the Virginia State Horticultural Society, urged that the uncertainty inherent in the definition of agricultural labor be removed, and that "agriculture should be either all in or all out to avoid conflicts." He

called particular attention to the dissatisfaction that would be occasioned by holding that a packing crew was within the provision of the bill while those engaged in picking fruit were exempt. He urged the adoption of the amendment proposed by Mr. Fraser.

Mr. Idus T. Gillett of the Dowlett Packing Co. of Camutillo, Texas, suggested that an exemption be given small canners operating in rural communities and employing fewer than twenty regular employees on a "year-round basis." He stated that raising wages in a cannery located in an agricultural community substantially above the prevailing wage in the community would cause chaos (Hearings, p. 1219).

Mr. Clippinger also argued that the exemption of employers with a small number of employees would upset the wage structure in the wholesale fruit-and-vegetable-distributing industry.

2. *S. 2475, as reported by the Senate Committee on Education and Labor, July 8, 1937 (Seventy-fifth Congress, first session, Senate Report No. 884)*

The Senate Committee on Education and Labor rewrote the bill, reporting an amendment in the nature of a substitute for the original bill.

In the amended bill the agricultural exemption was enlarged but the term "area of production" was not used.

The agricultural exemption, appearing in Section 2 (a), (7), read as follows:

> nor shall "employee" include any person * * * employed in the taking of fish, sea foods, or sponges; or any person employed in agriculture. As used in this Act, the term "agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, forestry, horticulture, market-gardening, and the cultivation and growing of fruits, vegetables, nuts, nursery products, ferns, flowers, bulbs, livestock, bees, and poultry, and further includes the definition contained in subdivision (g) of section 15 of the Agricultural Marketing Act, approved June 15, 1929, as amended, or any other agricultural or horticultural commodity, and any practices ordinarily performed by a farmer as an incident to such farming operations.

The report accompanying the bill contained only a brief statement that employee is defined so as to exclude—

> persons engaged in agriculture and such processing of agricultural commodities as is ordinarily performed by farmers as an incident of farm operatitons (75th Congress, first session, Senate Report No. 884).

Senator Black, chairman of the committee in charge of the bill, in opening the Senate debate on the bill, stated that it—

> specifically excludes workers in agriculture of all kinds and of all types. There is contained in the measure, perhaps, the most comprehensive definition of agriculture which has been included in any one legislative proposal.
>
> We have placed together in the bill definitions of agricultural work which have been fixed, from time to time, in other legislative enactments and in addition to that we have drawn liberally from Mr. Webster's definition of agriculture (81 Cong. Rec., July 27, 1937, p. 7648).

Senator Tydings raised the question whether under the definition of agriculture an employee threshing wheat on another man's farm would be exempt (81 Cong. Rec., July 27, 1937, p. 7653). The exemption of seasonal canneries was discussed at pages 7655 and 7656.

The meaning of the word "dairying" as used in the agricultural exemption was the subject of a colloquy between Senator Pope and Senator Black which appears at page 7656.

The concept of "area of production" was first injected into the debate by Senator Copeland

who read a telegram from the International Apple Association urging that the definition of agriculture be amended by adding the following:

> Or by an employee in connection with preparing for market, in their raw or natural state within the area of production, fresh fruits and vegetables, including packing, packaging, storing, transporting, and marketing of said commodities (81 Cong. Rec., July 27, 1937, p. 7656).

Senator Copeland continued:

> That is the proposed amendment. The argument is this:
>
> "This amendment applies only to fresh fruits and vegetables in their raw and natural state within the area of production and does not extend to canning or processing or any operations which change them from their raw or natural state. The amendment would then make paragraph 7 the same in principle as recognized by N. R. A. and A. A. A. and under which the fresh fruit and vegetable industry operated. Under modern conditions, developed by necessity, it is of utmost importance to multitudes of small growers from coast to coast that packing-house operations and storing within the area of production be exempted; otherwise, community packing and uniformity of grade will be disrupted and, moreover, small individual growers are not in position to equip themselves with highly expensive washing and grading machinery. All of

these costs come out of growers' pockets. Bear in mind we are asking that the amendment apply only to fresh fruits and vegetables which are highly perishable and in their raw and natural state only, and within the area of their production. There is well-established precedent for this under the carefully considered position taken by N. R. A. and A. A. A." (81 Cong. Rec., July 27, 1937, p. 7656).

Senator Black replied that—

> The committee, after careful consideration reached the conclusion that the definition of employee as given in paragraph (7) of section 2, and which is the broadest definition that has ever been included in any one act, was sufficient to include every genuine bona fide farming activity (81 Cong. Rec., July 27, 1937, pp. 7656–7657).
>
> So far as I recall, no member of the committee favored exempting, for instance, meat-packing houses. I use that as an illustration *and not that it is connected* with the suggestion made by the Senator from New York. The committee was not in favor of exempting the packing business as it related to many agricultural products. I refer to packing as a business. The farmer or the apple grower has a perfect right, of course, to pack his own apples either alone or in cooperation with his farming neighbors, I should say (81 Cong. Rec., July 27, 1937, p. 7657).

In response to questions by Senator Overton as to whether cotton ginning or sugar processing, if done by a farmer on a farm, would be exempt, Senator Black indicated that the test would be whether such processes were "ordinarily performed by a farmer as an incident to his farm operations". (81 Cong. Rec., July 27, 1937, pp. 7658–7659).

Senator Schwellenbach indicated that the bill put the small apple grower at a disadvantage. He stated:

> If I may, I should like to follow through some of the questions asked by the Senator from New York [Mr. Copeland] which the Senator from Alabama answered by reference to the growing and sale of watermelons.
>
> When an apple grower picks his apples and takes them into his own warehouse, as the Senator from New York has described, and in that warehouse packages them and then stores them, or perhaps first stores them and then packages them, the work being done by the farmer on his own farm, there is no dispute about the fact that it is an agricultural operation. I should like to say frankly, however, that when he takes the apples into market and sells them on the streets of New York City, as the Senator points out, I cannot see that is an agricultural operation.
>
> What I am interested in is the small apple producer who has a ranch so small

that he cannot afford to maintain upon his own ranch a warehouse with the necessary machinery and equipment which such warehouses now must have under the rules and regulations of the Department of Agriculture on the question of spray tolerance. It seems to me that the bill, under the definitions as they now stand, places at a considerable disadvantage the man who is too small an operator to perform these operations upon his own farm, and who must send his apples to a central warehouse to have the same processing done—by "processing" I do not mean canning; I mean the removal of the spray—and the same sort of storage, and who must bear all these increased costs, as compared with the larger operator who can do these things upon his own place of business.

I cannot see anything fair about that sort of discrimination. It seems to me the point of difference should be when the agricultural operation stops.

The picking of the apples is an agricultural process. If the man does it on his own ranch, the storing of the apples and the washing of the apples and the packing of the apples are all agricultural processes. If we leave the bill the way it now stands, it is going to mean that the large producer on the large ranch who can afford to maintain the equipment on his own ranch is going to have an unfair advantage over the small man who has only 5 or 10 acres, and who has to send his crop to a central ware-

house, or who may join with others in co-operative warehouses and there have the same processes performed.

I think—and I should like to ask the reaction of the Senator from Alabama to the suggestion—that the line of distinction might be made at the point of agricultural operation; that so long as the operation is purely an agricultural one, it should come within the exemption. When it becomes a processing operation, a canning operation, it ceases to be an agricultural operation. When it becomes a marketing operation, and the product gets to the railroad station, or leaves the warehouse for the purpose of going to the railroad station, it ceases to be an agricultural operation.

I should like to have the Senator's reaction to that suggestion.

Mr. BLACK. I think perhaps I can give the Senator an illustration which will demonstrate how difficult it is to draw the line at the point he mentions.

Going into another phase of farming, let us take the man who raises hogs. A great many farmers who raise hogs kill their hogs on their own farms. They prepare the hogs for market on their own farms and then send out the product. As the bill is framed, there would be no possible manner in which their employees could be included under the provisions of the bill, because that would clearly be farming; but if we should attempt to draw the line of distinction which the Senator has men-

> tioned we would find that we should have to exclude meat packers, whom I know the Senator would not believe it desirable to exclude, and we should thereby step into a field which we do not wish to enter (81 Cong. Rec., July 27, 1937, p. 7659).

Senator Reynolds suggested that an amendment exempting employers of ten or less employees would allay the fears of those who believed that small canners should be exempt (81 Cong. Rec., July 27, 1937, p. 7662).

The concept of "area of production" was proposed by Senator Schwellenbach in an amendment which would add to the definition of agriculture the following:

> the term "person employed in agriculture," as used in this act, insofar as it shall refer to fresh fruits or vegetables, shall include persons employed within the area of production engaged in preparing, packing, or storing such fresh fruits or vegetables in their raw or natural state (81 Cong. Rec., July 30, 1937, p. 7876).

The following discussion took place on the proposed amendment:

> Mr. SCHWELLENBACH. Mr. President, on day before yesterday I discussed the situation upon which the amendment is based.
>
> The amendment is very strictly drawn in an effort to limit the operations defined therein purely to those of an agricultural nature. I should like to say that, so far as I am concerned, I cannot agree with the position taken by the Senator from Missis-

sippi [Mr. Harrison], indicating that there might be some danger about extending this measure to agriculture. So far as I am concerned, I think there would be a regulation of hours and wages for all workers in the country; but the bill does not attempt to do that. The bill attempts to exempt agricultural workers. The situation in which I am principally interested is a situation involving the apple industry, and it is one in which, unless an exemption of this kind is made, there will be a discrimination against the small producer and in favor of the larger producer.

In other words, in a small apple operation of 5 or 10 or 15 or 20 acres, it is not possible for the owner of the ranch to purchase and maintain on the ranch the necessary machinery which is required in the washing operation under the rules and regulations of the Department of Agriculture. It is not possible for him to provide on his ranch the necessary storage space to store the apples until such time as it is possible to take them to market. It is not possible on the small ranch to supply the space for packing the apples. Therefore, it is necessary for such a farmer either to join other farmers in a cooperative, or to send his apples to a packing house, and have these operations, which are purely agricultural operations, performed elsewhere than at the situs of the ranch or the farm.

The purpose of this amendment is to give protection against that situation, and to

make it possible for the small fruit and vegetable producer to operate upon the same basis as the large fruit and vegetable producer.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. SCHWELLENBACH. I yield.

Mr. CONNALLY. Of course, apple raisers are already exempt, are they not, under the term "agricultural workers"?

Mr. SCHWELLENBACH. The amendment applies only to the packing, storing, and preparing of fresh fruits and vegetables.

Mr. CONNALLY. The effect of the amendment is to exempt all employees of apple-packing plants; it is not?

Mr. SCHWELLENBACH. If they are engaged in the area of production, and so long as the apples are in their natural or raw state; yes, sir.

Mr. COPELAND. Mr. President, did the Senator include in his amendment the word "transportation"?

Mr. SCHWELLENBACH. No; I did not include the word "transportation," because I do not believe that the transportation should be exempt; and I did not include "processing."

Mr. COPELAND. If the Senator will yield further for a moment, we have the same problem of the apple grower in my State. The small orchardist has seasonal work in the neighborhood in the picking, sorting, storage, and transportation of his apples.

What I mean by "transportation"—perhaps it is not the right use of the term—is the carriage of apples in the ripe season to the nearby markets, which in my case is New York City, and the work of those who drive the trucks and rush the apples from the cooperative or private storage house to the city; so does not the Senator think that word, too, should be used?

Mr. SCHWELLENBACH. I will say to the Senator that as the amendment was originally prepared it had "transportation and marketing" in it. I have tried to limit the amendment to what I consider agricultural operations. Perhaps I am incorrect about it, but I do not feel that taking apples into market and selling them are parts of agricultural operations.

Mr. COPELAND. I live in Rockland County, N. Y., which is on the New Jersey line; and while the city of New York is the largest market for the apples raised in Rockland County, a great many apples are disposed of in Newark, New Jersey. The truck of the farmer carries the fruit to the market in Newark, which is a standard market where merchants go to get material, and the farmer stays there on the market stand until he can dispose of his truckload of apples. That is what I have in mind, because, of course, the transaction of getting rid of the produce may take late afternoon and all night. So as I originally introduced the amendment I had in it "transportation and marketing," and also the language the Senator used, which makes it clear that the

transaction is in the neighborhood; that it is not a great, big transaction involving a trip across the continent.

Have I made clear the thought I have in mind to the point where the Senator will accept the words "transportation and marketing" and make them an addition to his amendment?

Mr. SCHWELLENBACH. I will say to the Senator from New York that I studied the amendment very carefully; and when we get beyond the point of preparing, packing, and storing—those operations which can be done on the farm by the large farmer as compared with the small one—I feel that we are going beyond the point of agricultural operations, and that the work really is not agricultural work.

Mr. COPELAND. Mr. President, I disagree with the Senator, and do so, of course, in all good spirit; but what I am saying is founded upon actual knowledge. The farmer may be a very small farmer. He may not produce more than one or two or three hundred barrels of apples, but in order to get them to market he has to put them on a truck—his own truck or a hired truck—and go the short distance, perhaps 20 miles, to the town where there is a central market where he may dispose of his product. That seems to me to be very obviously a part of the agricultural transaction, and yet I fear that I have not been able to convince the Senator from Washington to that effect.

Mr. SCHWELLENBACH. Possibly I have convinced myself the other way so thoroughly that the Senator's statement has not served to change my mind about the matter.

Mr. COPELAND. As a matter of fact, is not the problem quite a different one in the great apple country of the West, where there are tremendous crops of apples which are taken in large quantities to the railroad station and shipped on to New York, where we buy and eat those apples; while on the other hand, the small farmer in my section is not commercially engaged in the orchard business, as they are in the West, or as they are on the great plantation of the junior Senator from Virginia [Mr. Byrd]? What the small farmer of my sections does is a part of his farming transaction. He takes his apples to market and gets rid of them; and I want to help him as much as I can.

Mr. MCCARRAN. Is it not true, in keeping with what the Senator from New York has said, that in the State of the Senator who offered this amendment, the real truth is that the farmer takes the apples to a processing plant? I myself have seen this operation in the Senator's State, though the Senator knows about it much better than I do. The farmer takes the apple from the orchard to the processing plant. In other words, that is where the apple is really graded and boxed and prepared for shipment.

It seems to me that the Senator from New York is entirely correct in stating that

up to the point where the apple is boxed and ready for shipment it is and remains a product of the farm and is handled by the farmer. It seems to me the Senator is forgetting the real point of his amendment.

Mr. REYNOLDS. Mr. President, will the Senator from Washington yield to me?

Mr. SCHWELLENBACH. I yield.

Mr. REYNOLDS. A moment ago, in explaining his amendment, the Senator from Washington made reference to orchards covering 15 or 20 acres. Am I to assume that the Senator had in mind the protection of the small producer?

Mr. SCHWELLENBACH. The production of the small producer as compared with the larger producer. In other words, the small producer cannot afford to have the capital investment in the warehouse, the washing machinery, all of the necessary incidentals to this operation, while the larger producer can afford them, and he is exempt from the provisions of the bill.

Mr. REYNOLDS. The small producer would hardly have more than 8 or 10 men employed in the gathering of a crop?

Mr. SCHWELLENBACH. He takes his apples to a warehouse, however, and there are more than 8 or 10 employed in the warehouse.

Mr. REYNOLDS. In that instance, would not the Senator's amendment exclude from the provisions of the bill the larger cold-storage plants, where there are employed hundreds of men, and would not the

amendment of the Senator from Washington really exempt from the provisions of the law the larger refrigerating plants throughout the entire country?

Mr. SCHWELLENBACH. I limit my amendment to employees who are working upon products from the immediate area, products in their raw or natural state, in their preparation, packing, and storing. I do not think that in these operations there would be any large or enormous plants such as the Senator has in mind.

Mr. REYNOLDS. I gathered from the terms of the amendment that it would actually remove from the provisions of the bill the larger cold-storage plants throughout the country. Of course, many of them we find in the cities of New York, Chicago, St. Louis, San Francisco, and Seattle.

Mr. SCHWELLENBACH. Those are not in the immediate production area.

Mr. REYNOLDS. But they would be included.

Mr. SCHWELLENBACH. No; they would not be included because they are not in the immediate production area.

Mr. COPELAND. Mr. President, may I ask the Senator from North Carolina a question?

Mr. SCHWELLENBACH. I yield to the Senator from New York.

Mr. COPELAND. Let me ask the Senator from North Carolina whether in all probability the point I have in mind is not

provided for in the amendment he offered, which has just been adopted. His amendment, as I understand, applies the bill to those who employ 10 or more persons. Is that correct?

Mr. REYNOLDS. That is correct.

Mr. COPELAND. As the Senator understands his amendment, does it mean that to a fruit farm such as I have described, unless there are in excess of 10 persons, the act would not apply?

Mr. REYNOLDS. Under my amendment any firm, individual, association, or corporation employing 10 or less number of persons would not be subject to the provisions of the bill. That is why I made inquiry a moment ago as to whether or not the small producers of apples would not be reached by it. What I am particularly interested in ascertaining as to the amendment is whether or not it will be of material benefit to the small producer. I expect in a few moments to offer an amendment eliminating tobacco warehouses. There are 57 of them in North Carolina, and their work is seasonal. Eliminating them from the provisions of the proposed law would benefit the tobacco farmers of my State. So I am assuming that the amendment offered by the Senator from Washington would actually be of benefit to the small fruit growers of his State. That is the intent, is it not?

Mr. SCHWELLENBACH. That is the purpose of it.

Mr. CONNALLY. Mr. President, I should like to ask the Senator from Washington a question. Would not the effect of his amendment be to exempt all industrial warehouses and packing plants in apple territory? There is no limit. The condition is that they are packing plants, and if they are, they are exempt.

Mr. SCHWELLENBACH. If a packing plant is working upon fresh fruits or vegetables, in their raw or natural state, within the immediate production area, it would be exempt.

Mr. CONNALLY. My understanding is that the largest apple packing plant in the world is located at Winchester, Va., right in the heart of a great apple-producing region? That would be exempt, would it not?

Mr. SCHWELLENBACH. If the work done in that plant is as described in the amendment, it would be exempt.

Mr. CONNALLY. Why should a man engaged in packing apples be exempt, and a man packing lemons or oranges or grapefruit, not be exempt? What is there about apples that makes them entitled to exemption?

Mr. SCHWELLENBACH. The purpose of the amendment is not for protection of the packing plant or for the protection of the owners of the packing plant. The cost is paid by the producer. These packing plants just pass the cost back to the man who produces the apples. The farmer

pays the bill. The purpose of the amendment is to permit the small farmer, who cannot afford to have his own warehouse and cannot afford to have his own washing machine, to be placed upon a parity with the larger producers, who can afford to maintain their own warehouses and their own washing machines and their own equipment.

Mr. BARKLEY. Mr. President, will the Senator from Washington yield?

Mr. SCHWELLENBACH. I yield.

Mr. BARKLEY. I suppose that any establishment dealing with apples as they come from the orchard is dealing with them in their raw state.

Mr. SCHWELLENBACH. That is correct.

Mr. BARKLEY. There are many things which may be made from apples—for instance, applesauce, which I presume is not included within the regulations of the bill. But if we provide for the exemption of plants which are dealing with apples as a raw material, we include practically all plants which deal with apples, because they deal with them only as raw materials. Is that true?

Mr. SCHWELLENBACH. No; I think the Senator is incorrect in that suggestion. The exemption applies when they deal with them in their raw or natural state. If they start making cider out of them, or start making applesauce out of them, then they are processing and not dealing with them in their raw or natural state.

Mr. BARKLEY. They are dealing with the apple in its raw state?

Mr. SCHWELLENBACH. Not after they put it through the first grinder. It then ceases to be in the raw or natural state.

Mr. BARKLEY. Somewhere between the apple and the cider this proposed law will take effect.

Mr. SCHWELLENBACH. I do not think there would be any difficulty as to a construction of that kind, because once it gets to the point which the Senator from Kentucky describes, then it becomes processing, and there is no inclusion of processing in the amendment.

Mr. BLACK. Mr. President, will the Senator yield to me?

Mr. SCHWELLENBACH. I yield.

Mr. BLACK. Would the amendment apply to a cannery?

Mr. SCHWELLENBACH. No.

Mr. BLACK. What would be the definition of the word "prepare"?

Mr. SCHWELLENBACH. "Prepare in the natural or raw state" is washing.

Mr. BLACK. It is limited, as the Senator understands, to the fruit as it actually comes from the tree?

Mr. SCHWELLENBACH. Yes.

Mr. BLACK. The Senator knows that the committee has tried to provide and is favorable to a complete exclusion of activities which are purely agricultural. We have tried to write the bill in such a way as to take care of that situation. What about

the "area"? What would be the definition of "area"? Would it not be possible to define it more clearly to get the effect?

Mr. SCHWELLENBACH. *I gave considerable thought to that. I do not believe it is possible, and that is something which the board, which has been accused of receiving too much power, would have to decide. It would have to provide a definition of "immediate production area."* [Italics supplied.]

Mr. BLACK. The Senator believes that in order to obtain the effect of what the committee has tried to do in writing the bill, it is essential that this amendment be adopted insofar as this particular type of business is concerned?

Mr. SCHWELLENBACH. I feel so, and it is for that reason that I am offering the amendment. (81 Cong. Rec., July 30, 1937, pp. 7876, 7877, 7878.)

At the suggestion of Senator Black that Senator Pepper be consulted regarding the proposed amendment, it was temporarily withdrawn.

Senator Reynolds proposed an amendment exempting from the provisions of the Act "tobacco warehouses, their employers or employees." (81 Cong. Rec., July 30, 1937, p. 7878.)

Senator Barkley suggested that the amendment should not be extended to warehouses "that are not seasonal * * *":

> There are some tobacco warehouses to which the tobacco is delivered during the

> tobacco season, but during almost the whole year the warehouse operators engage in the process of prizing and stripping and stemming. I do not think the Senator means to exempt warehouses of that sort that engage in more or less year-round activity. (81 Cong. Rec., July, 1937, pp. 7878–7879; for the complete debate on this amendment see, *infra*, pp. 100–119.)

The amendment was subsequently enlarged to include cotton compressors, cotton warehouses, cotton ginning and baling, and was subsequently rejected by a tie vote. (81 Cong. Rec., July 30, 1937, p. 7887.)

Senator Overton urged that cotton ginning was a step in the process of getting the farmers' agricultural product to market and that since the cost of ginning was imposed directly upon the farmer the operation should be exempt as an agricultural activity. (81 Cong. Rec., July 30, 1937, p. 7880.)

Senator McGill proposed an amendment making the agricultural exemption applicable to practices ordinarily performed "on a farm" as well as by a farmer, and adding to that exemption the words "including delivery to market." The discussion on this amendment follows:

> Mr. McGILL. Mr. President, the purpose of the amendment is to broaden the definition of "employee" as applied to agriculture. I can readily see how some have construed the language of the bill to mean

that one who operates a threshing machine outfit and employs a crew and is employed by a farmer to thrash his wheat might be included under the provisions of the bill. Likewise, those who are engaged in harvesting and delivering to market might be included. It is my understanding, although no definite commitment has been made, that the amendment is not opposed by those in charge of the bill. If I am correct, I should like to have the amendment agreed to.

Mr. GEORGE. Is it the purpose of the amendment to exempt those who thresh grain?

Mr. MCGILL. Those who thresh grain, who harvest grain, and deliver it to market.

Mr. GEORGE. Would the amendment also apply to the harvesting of any other crop?

Mr. MCGILL. It would apply to any commodity produced on a farm.

Mr. GEORGE. Would it apply to peanut pickers who pick in the fields?

Mr. MCGILL. Yes.

Mr. GEORGE. And who move peanuts to the market.

Mr. MCGILL. Yes; that is my understanding.

Mr. GEORGE. I should like to ask the Senator from Alabama if that is his interpretation of the amendment.

Mr. BLACK. That is my interpretation of the amendment, and it is my belief that the bill as originally drawn covers what is now contained in the language of the amendment; but some Senators who were doubt-

ful about it wished to draw a clarifying amendment.

Mr. GEORGE. I am sure it does not in fact do so, because the picking of peanuts and the harvesting of grain in my part of the country are done purely by contract with outsiders, who in a great many cases have no farm interest. What I want to get at is whether, in the opinion of the Senator from Alabama, the language of the amendment of the Senator from Kansas includes any field crop that is threshed, as in the case of grain, or picked, as in the case of peanuts in the field.

Mr. BLACK. Unquestionably.

Mr. MCGILL. I may say to the Senator from Georgia and other Senators that it is my object to make the language of the amendment broad enough to include all work done on a farm, so long as it is incidental to agricultural purposes.

Mr. GEORGE. And so long as it is merely preparatory and necessarily preparatory to the marketing of the field crop. Is that true?

Mr. MCGILL. That is true; and the language would also include all labor performed in making delivery to market.

Mr. GEORGE. I thank the Senator.

Mr. COPELAND. Of course, that would take care of my apple man, about whom I have been worrying, would it not? It would take care of the farmer who takes his crop of apples to the market, would it not?

Mr. McGILL. That is correct. (81 Cong. Rec., July 30, 1937, p. 7888.)

The amendment was adopted (81 Cong. Rec., July 30, 1937, p. 7888).

Senator McAdoo proposed an amendment, substituting for the language in the definition of agriculture relating to practices ordinarily performed in connection with farming operations, the following:

> Any practices ordinarily performed by or for a farmer as an incident to such farming, including harvesting, packing, storing, or preparing for market, in the raw or natural state, any products derived from any of the above agricultural pursuits. (81 Cong. Rec., July 31, 1937, p. 7927.)

The following discussion ensued:

> Mr. McADOO. Mr. President, under the pending bill agriculture is excluded, but the definition of agriculture in the bill is not sufficiently broad to include work so closely connected with farming as to be substantially a part of it, such as packing, storing, and preparing for market.
>
> Further, it does not cover services which, in my State—California—where producer cooperatives flourish, are largely performed for the farmers by the cooperative associations of which the farmers are members. Among such groups in California may be mentioned the fruit growers' exchange, the raisin growers, the prune growers and

others of a similar character. The practice in these cases is for the laborers to work for the association—that is, the cooperative—rather than for the individual farmer, and the association does the packing and preparing for market, which elsewhere is generally done by the farmer himself.

These agricultural commodities are highly perishable, and the work which must be done by the packing houses and on the farms varies greatly with temperature variations. Twenty-four hours in advance one cannot know whether the crop must be moved. So, to fix rigid hours of labor in such cases would be to ruin the producers, as the crop must be handled quickly with the workers available. The broadening of the definition as I have suggested is not only directly in line with the object of the bill but will also protect the farmers, who, in my State at least, are engaged in a method of marketing, packing, and handling their crops which may differ from the methods employed in other States.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. MCADOO. I yield.

Mr. BARKLEY. Regardless of the merits of the first part of the Senator's amendment, on which I do not wish to comment, the last part seems to me to make possible the interpretation that the exemption would apply to any product derived from agricultural products all through the proc-

ess of manufacture, no matter to what extent or degree.

I appreciate what the Senator is trying to do; he wishes this proposed law to be inapplicable to the operations referred to by him. He seeks to strike out the language in lines 13 and 14, and proposes to substitute therefor the words—

"Any practices ordinarily performed by or for a farmer as an incident to such farming, including harvesting, packing, storing, or preparing for market, in the raw or natural state, any products derived from any of the above agricultural pursuits."

"Any products derived from any of the above agricultural pursuits" might mean the manufacture of shoes, which come, of course, from leather, which comes from hides, which come from cows. It might be regarded to follow up the manufacture of horse collars, which are made of leather and straw, which are agricultural products. I am wondering whether the Senator wishes his amendment to go that far?

Mr. McADOO. I had not intended it to cover horse collars or shoes, I will admit.

Mr. BARKLEY. Horse collars are manufactured from products derived from agriculture, as the Senator knows, both as to the leather and the straw.

Mr. McADOO. Almost everything in the form of food and clothing is manufactured from products of the farm.

Mr. BARKLEY. Yes; but I do not think the Senator wants his amendment to follow these things from the farm through all the factories so as to exclude them from the operation of the bill because they are "derived from agricultural pursuits."

Mr. MCGILL. Yesterday afternoon the Senate amended the lines to which the Senator's amendment applies by inserting in line 13, after the word "farmer," the words "or on a farm," and also by inserting in line 14, after the word "operations," the words "including delivery to market," it being the purpose of those amendments to exclude from the bill all labor performed on a farm, whether by contract with the farmer or otherwise, and to exclude all labor connected with the delivery to market of commodities produced on a farm. Does not that cover what the Senator has in mind for his amendment?

Mr. MCADOO. I do not think it is sufficiently broad. I may say to the Senator from Kansas so much of the preparation of our crops in California is through farm cooperatives that the alterations which have been made in the amendment I think do not widen it as much as is needed. I think, perhaps, I can meet the objection raised by our distinguished leader by omitting in lines 5 and 6 of my proposed amendment the concluding part, namely, the words "products derived from any of the above agricultural pursuits."

Mr. BARKLEY. That is the language I was afraid of, and I think that the Senator's amendment would be improved by eliminating those words.

Mr. MCADOO. I am willing to strike out that part of the amendment and to submit the amendment in that form.

Mr. HATCH. Mr. President, will the Senator yield for a question?

Mr. MCADOO. I yield.

Mr. HATCH. Would the Senator be willing to add, in lieu of the words which he now says he is willing to strike out, the language proposed by the Senator from Kansas [Mr. McGill] relating to delivery to market, say, the words "including delivery to market"?

Mr. MCADOO. I have no objection to that.

Mr. HATCH. I believe, then, the Senator's amendment would cover everything included by the amendment of the Senator from Kansas.

Mr. MCGILL. Mr. President, will the Senator from California yield?

Mr. MCADOO. I yield.

Mr. MCGILL. In response to what the Senator from New Mexico has just said, I will state that I feel the amendment adopted yesterday is broader than the amendment proposed by the Senator from California, by virtue of the fact that no limitation was placed in the amendment adopted yesterday such as mentioning harvesting, packing, and operations of that

character. The amendment adopted yesterday was intended to include, and I think it does include, all kinds of labor performed on a farm and all kinds of labor in connection with delivering agricultural products to market. In my judgment, it includes more than does the amendment proposed by the Senator from California and is broader in its terms. I hope that the amendment adopted yesterday will remain in the bill and that the amendment of the Senator from California, by virtue of the narrower terms carried in it, will be rejected.

Mr. McADOO. Mr. President, the amendment suggested by me is not intended to eliminate the amendment to which the Senator from Kansas referred.

Mr. MCGILL. But it strikes out the amendment to which I refer.

Mr. MCADOO. Has the Senator the amendment before him?

Mr. MCGILL. It was adopted yesterday and is in the Record. The Senator's amendment, if agreed to, would strike out entirely the lines covering the amendment to which I refer.

Mr. PEPPER. I ask the Senator from California if it would not meet his objection and at the same time preserve the liberal amendment inserted yesterday, which was offered by the Senator from Kansas [Mr. McGill], to let the amendment of the Senator from California come

after the amendment of the Senator from Kansas, so that the bill would provide:

"And including any practices ordinarily performed by or for a farmer as an incident to such farming, including harvesting, packing, storing, or preparing for market, in the raw or natural state."

Mr. McADOO. I consider that of the utmost importance where a large part of the services are rendered through farm cooperatives, and for that reason, while I do not want to affect the amendment of the Senator from Kansas, nevertheless I think the suggestion of my friend from Florida is worthy of consideration.

Mr. MCGILL. I appreciate the purpose of the Senator from California, but my judgment is that his amendment will operate simply as a limitation to the amendment I offered and will not broaden its scope.

Mr. ADAMS. The Senator from California has stricken from his amendment the clause "any products derived from any of the above agricultural pursuits," so that it merely applies to processing without saying whether it is an agricultural product or not. He has stricken out the definition of agricultural products.

Mr. PERTH. The Senator from California has not stricken out anything, according to his later suggestion. He merely suggests that he will let the provision be added at the end of the amendment of the Senator from Kansas, so that it will take

care of what he has in mind without interfering with the exemptions which other Senators desire to have incorporated in the bill.

Mr. McADOO. From a hasty examination of the amendment which the Senator from Kansas (Mr. McGill) has brought to my attention, I cannot see how my amendment, if inserted in the bill, would have the effect which has been suggested. But, on the other hand, my amendment takes care of a situation involving the use of cooperatives.

Mr. GEORGE. I suggest to the Senator from California that, in my opinion, the amendment offered by the Senator from Kansas (Mr. McGill) yesterday is broader than his amendment, because it takes care of all operations, whether performed by cooperatives or by persons under contract or by persons who have merely been employed for a particular job. To enumerate even them in a succeeding clause, or to recite the things that are included, would thus, of course, under the well-known rule of construction, form a limitation upon what is first stated as a broad general proposition. I think the Senator's purpose is absolutely accomplished by the amendment offered yesterday by the Senator from Kansas.

I may say to the Senator from California that I had in mind precisely what he has in mind, but with reference to different products. After examining the amendment of the Senator from Kansas I concluded that it covered all those cases as well as the cases

which I think the Senator himself has in mind.

Mr. McADOO. Then I shall ask that further consideration of my amendment be deferred for the moment. I should like now to offer a second amendment to the amendment of the committee. (81 Cong. Rec., July 31, 1937, pp. 7927, 7928, 7929.)

An amendment proposed by Senator Borah, reading as follows:

> And provided further, that the provisions of this paragraph (c) shall not apply to employees employed in a plant located in dairy-production areas in which milk, cream, or butterfat are received, processed, shipped, or manufactured if operated by a cooperative association as defined in the Farm Credit Act of 1933—

was adopted. (81 Cong. Rec., July 31, 1937, p. 7947.)

An amendment proposed by Senator Overton including the ginning and baling of cotton in the definition of agriculture was rejected. (81 Cong. Rec., July 31, 1937, pp. 7951–7952.)

An amendment proposed by Senator Reynolds exempting from the provisions of the act employers of five or fewer than five persons was rejected. (81 Cong. Rec., July 31, 1937, p. 7948.)

Mr. Schwellenbach's amendment relating to persons employed within the area of production in the preparation, etc., of fresh fruits and vegeta-

bles, was adopted. (81 Cong. Rec., July 31, 1937, p. 7949.)

The bill was passed by the Senate on July 31, 1937, by a vote of 54 to 28. (81 Cong. Rec., July 31, 1937, p. 7957.)

3. S. 2475, as reported by the House Committee on Labor, August 6, 1937 (Seventy-fifth Congress, first session—H. Report No. 1452)

S. 2475, as passed by the Senate, was referred to the House Committee on Labor. As reported on August 6, 1937, the bill contained the following provisions relating to agriculture.

> Section 2 (a) (7) provided that the term "employee" shall not include any person employed in the taking of fish, sea foods, or sponges; or any person employed in agriculture. As used in this Act, the term "agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, forestry, horticulture, market-gardening, and the cultivation and growing of fruits, vegetables, nuts, nursery products, ferns, flowers, bulbs, livestock, bees and poultry, and further includes the definition contained in subdivision (g) of Section 15 of the Agricultural Marketing Act, approved June 15, 1929, as amended, or any other agricultural or horticultural commodity, and any practices performed by a farmer or on a farm as an incident to such farming operations, including delivery to market. Independent contractors and their

employees in transporting farm products from farm to market are not persons employed in agriculture.

Section 2 (a) (10) defined *oppressive child labor* as meaning a condition of employment under which "any employee (as defined in the Act to exclude employees of agriculture) under the age of sixteen years. * * *"

Section 2 (a) (20) provided that "the term 'person employed in agriculture' as used in this Act, insofar as it shall refer to fresh fruits or vegetables, shall include persons employed within the area of production engaged in preparing, packing, or storing such fresh fruits or vegetables in their raw or natural state."

Section 4 (c) (5) provided that the provisions of that subsection relating to the Board's power to declare maximum workweeks "shall not be applicable with respect to any person employed in connection with the ginning, compressing, and storing of cotton or with the processing of cottonseed, the canning or other packing or packaging of fish, sea foods, sponges, or picking, canning, or processing of fruits, or vegetables, or the processing of beets, cane, and maple into sugar and syrup, when the services of such person are of a seasonal nature: *And provided further*, That the provisions of this paragraph (c) shall not apply to employees employed in a plant located in dairy production areas in which milk, cream, or butterfat are received, processed,

shipped, or manufactured if operated by a cooperative association as defined in Section 15, as amended, of the Agricultural Marketing Act."

Section 4 (c) (5) provided that "the provisions of this subsection shall not apply to employees engaged in processing or packing perishable agricultural products during the harvesting season";

Section 16 authorized the Board to make regulations including but not limited to regulations defining technical and trade terms used in the Bill.

The only changes proposed by the Committee were:

(1) Striking "ordinarily" from the definition of agriculture, so that that definition included any practices performed by a farmer on a farm as an incident to farm operations, without qualifications.

(2) Adding a provision to the definition of agriculture excluding "independent contractors and their employees engaged in transporting farm products from farm to market."

(3) Substituting for the words "ginning and baling", in the exemption from the hours provision of the bill in Section 4 (c), the words "ginning, compressing and storing" and including in that exemption "the processing of cottonseed."

(4) Striking from the exemption from the hours provision in Section 4 (c) the reference to the Farm Credit Act of 1933 and substituting a

reference to Section 15, as amended, of the Agricultural Marketing Act.

The report accompanying the bill contained only the following comment:

> Air-transport employees subject to title II of the Railway Labor Act are also excluded from the definition of "employee" as are all persons employed in agriculture. "Agriculture" is defined to include, among other things, practices ordinarily performed by farmers or on a farm as an incident to farm operations. A committee amendment proposes to strike out the word "ordinarily" before "performed." A committee amendment proposes to make it clear that independent contractors and their employees engaged in transporting farm products from farm to market are not persons employed in agriculture.

The Rules Committee of the House refused to grant a rule permitting consideration of the bill, necessitating its abandonment during the First Session of the Seventy-fifth Congress.

On December 13, 1937, the Rules Committee was discharged from further consideration of the bill by petition of the membership of the House.

Mrs. Norton, chairman of the House Committee on Labor, offered an amendment in the nature of a substitute for the bill (82 Cong. Rec., December 15, 1937, p. 1572). The definition of agriculture in the proposed substitute was identical with the

definition in the bill as passed by the Senate with the amendments proposed by the House Committee on Labor. The amendment contained all the other provisions relating to agriculture in the bill as passed by the Senate and proposed to be amended except those appearing in Section 4 (k) of the Senate bill as reported to the House (82 Cong. Rec., December 15, 1937, p. 1581).

Mr. Griswold also offered an amendment in the nature of a substitute containing substantially the same conditions as to agriculture as Mrs. Norton's. The Griswold amendment was rejected (82 Cong. Rec., December 15, 1937, p. 1604).

A series of amendments offered by Mr. Bland, designed to exempt from both the wages and hours provision of the bill employees engaged in various processing of agricultural commodities, were rejected (82 Cong. Rec., December 17, 1937, pp. 1776, 1777).

Likewise rejected was a proposed amendment including in the definition of agriculture operators of sawmills and manufacturers of lumber products employing not more than 25 persons (82 Cong. Rec., December 17, 1937, p. 1777).

An amendment offered by Mr. Kerr adding to the definition of "person employed in agriculture" persons employed within the area of production and in the manufacture of packages or containers used in the shipment of fruit, fish, or vegetables was rejected (82 Cong. Rec., December 17, 1937, pp. 1777, 1778).

An amendment offered by Mr. Barton including in the definition of agriculture persons employed in connection with the selling of tobacco in auction warehouses was rejected (82 Cong. Rec., December 17, 1937, p. 1783; for the complete history of this amendment and the House debate pertaining to it, see, *infra*, pp. 119–122).

Mr. Lea proposed an amendment substituting for the words "fresh fruits or vegetable" in the definition of persons employed in agriculture the words "fresh or dried fruits or vegetables, nuts or eggs" and inserting the word "dried" in the phrase "raw or natural state" (82 Cong. Rec., December 17, 1937, p. 1783).

A substitute amendment was offered by Mr. Lucas to Mr. Lea's amendment making the provisions of the definition applicable generally to "agricultural commodities" and adding after the expression "raw or natural state" the provision including persons employed by any cooperative association as defined in the Agricultural Marketing Act if the association is engaged in preparing, packing, or storing agricultural commodities in their raw or natural state.

Mr. Lucas explained his amendment in part as follows:

> Mr. LUCAS. In paragraph 7 of section 2 of this bill you will find a definition of "employees." Read along and in line 12 you will find the words "or any person employed in agriculture."

There is nothing further than that so far as the definition of people employed in agriculture is concerned until you arrive on page 8, subsection (20), where you have a definition of the term "persons employed in agriculture," which limits it to fresh fruits or vegetables, but you do not find in this bill at any other paragraph anything about who a person employed in agriculture is unless you refer back to section 2. This amendment merely provides that a "person employed in agriculture" shall include persons employed within the area of production engaged in preparing, packing, or storing agricultural commodities in the raw or natural state.

It broadens the definition and will adequately protect the farmers of my section. It exempts agriculture in all its branches and work incidental thereto, including the necessary handling and preparing for market commodities when performed by the farmer or by a farmers' owned and controlled cooperative. *It should be understood that it applies only to the employees in the area to be determined by the Administrator where the commodity is produced.* [Italics supplied.]

Mrs. NORTON. Mr. Chairman, I rise in opposition to this amendment. If this amendment is accepted it virtually kills the entire section, since it takes out of the bill everybody who has anything to do with agriculture.

Mr. MAVERICK. Mr. Chairman, will the gentlewoman yield?

Mrs. NORTON. I yield.

Mr. MAVERICK. I want to say that in my district there are pecan pickers or shellers who work for 3 to 5 cents an hour! Think of it! If this amendment goes on these people are apparently without any protection whatever, and this bill will do them no good. So this amendment ought to be rejected.

Mrs. NORTON. The gentleman is exactly right. I have letters from a number of those workers, and if there is anything to help them, it is to kill this amendment.

Mr. MAVERICK. If there is anything to be done, it can be done in conference. The conference can iron out these points.

Mrs. NORTON. Exactly. I sincerely hope this amendment will be voted down.

Mr. LEA. Mr. Chairman, will the gentlewoman yield?

Mrs. NORTON. I yield.

Mr. LEA. I call attention to the fact that the amendment does not affect picking, to which the gentleman from Texas (Mr. Maverick) refers. It has nothing to do with picking. It simply relates to the preparation of the farmer's product for the market after the fruit has been picked.

Mr. MAVERICK. When I say "pick" it does not mean picking it off the tree. It means breaking it and taking the nut out of the shell. These people are industrial

workers, not agricultural. They should be protected by the minimum-wage law.

The amendment was adopted (82 Cong. Rec., December 17, 1937, pp. 1783, 1784).

An amendment, offered by Mr. Pace substituting for the words "and growing" in the definition of agriculture the explanation "cultivation, growing and harvesting," was adopted (82 Cong. Rec., December 17, 1937, p. 2320). The amendment was explained merely as perfecting the definition by making it clear that harvesting was to be an exempt operation (82 Cong. Rec., December 17, 1937, p. 1785).

An amendment offered by Mr. Whitfington including in the definition of agriculture "any person employed in connection with the ginning of cotton" was rejected (82 Cong. Rec., December 17, 1937, pp. 1786, 1787).

On December 17, 1937, a motion to recommit to the Committee on Labor was adopted, and a subcommittee of the House Committee on Labor was appointed to revise S. 2475 on March 1, 1938. A confidential subcommittee print dated April 7, 1938, contained the following definition of agriculture (Section 2 (a) (7)):

> As used in this Act, the term "agriculture" includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the cultivation, growing, and harvesting of any agricultural or horticultural commodities,

the raising of livestock, bees, poultry, and any practices performed by a farmer or on a farm as an incident to such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. The term "person employed in agriculture" as used in this Act shall include persons employed within the area of production engaged in storing for the farmer, preparing (but not commercial processing), or packing agricultural or horticultural commodities in their raw, natural, or dried state, but shall not include employees of transportation contractors engaged in transporting farm products from farms to market.

The Committee on Labor rejected the subcommittee amendment and adopted a substitute for the bill presented by Mrs. Norton. On April 21, 1938, another draft of S. 2475 was reported to the House as an amendment in the nature of a substitute for S. 2475 (75th Congress, first session, H. R. Report No. 2182). As reported, the bill contained the following provisions relating to agriculture:

Section 3 (f) contained the following definition of agriculture: "Agriculture includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the cultivation, growing, and harvesting of any agricultural or horticultural commodities,

the raising of livestock, bees, foxes, or poultry, and any practices performed by a farmer or on a farm as an incident to such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

Section 3 (g) defined employee employed in agriculture as follows: "Employee employed in agriculture" includes individuals employed within the area of production engaged in storing for the farmer, preparing (but not commercial processing), or packing agricultural or horticultural commodities in their raw, natural, or dried state, but does not include employees of transportation contractors engaged in transportation of farm products from farm to market.

Section 11 provided that the provisions of Sections 4 and 5 relating respectively to minimum wages and maximum hours, shall not apply to any air transport employee subject to the provisions of title II of the Railway Labor Act; or (5) any employee employed in the taking of fish, sea foods, or sponges; or (6) any employee employed in agriculture; (7) any employee to the extent that such employee is exempted by regulations or orders of the Secretary issued under section 12.

Section 11 (c) provided that the "provisions of section 10 shall not apply to any employee employed in agriculture."

The report accompanying the bill contained the following comment:

> Agriculture is defined to include farming in all its branches, and among other things to include the cultivation and tillage of the soil, dairying, the cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, foxes, or poultry, and any practices performed by a farmer or on a farm as an incident to such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
>
> "Employee employed in agriculture" is defined to include individuals employed within the area of production engaged in storing for the farmer, preparing (but not commercial processing), or packing agricultural or horticultural commodities in their raw, natural, or dried state. It does not include employees of transportation contractors engaged in transportation of farm products from farm to market. The definitions of "agriculture" and "employee employed in agriculture" are important in connection with the exclusion of employees in agriculture from all the provisions of the committee amendment.

The Rules Committee was discharged from further consideration of the bill on May 23, 1938, and the bill was adopted in the House on May 24, 1938.

Congressman Biermann, on May 23, 1938, announced that he would propose an amendment designed to remove the hardship that the bill in its present form "imposes on farmers." He stated:

> The Bill, as presently worded, imposes hardships on the farmers, which in no way serve the purpose of the Bill. In section 2 the purpose of the Bill is declared to be to remedy "substandard labor conditions." Nobody complains of substandard labor conditions in the creameries, cheese factories, and similar institutions in the farming areas. As Charles W. Holman, secretary of The National Cooperative Milk Producers' Federation, says:
>
> "Persons employed in agricultural processing plants in country districts are well paid and are envied persons in their community. Farm labor and, indeed, many farmers themselves would be happy to change places with those persons, fortunate enough to be employed in creameries, cheese factories, and country milk plants."
>
> Tomorrow I shall offer the following amendment, which I hope the committee will accept:
>
> "Strike out subsection (g) of section 3 and insert in lieu thereof: '(g) "Employees engaged in agriculture" includes individuals employed within the area of production engaged in the handling, packing, storing, ginning, compressing, processing, pasteurizing, drying, or otherwise preparing agricultural commodities for market.'"

> Nearly every large farm organization in the United States has endorsed this amendment. I know of none that opposes it. It is a well-known fact that most of the cost—in most cases all of it—of running these farm factories is taken out of the amount the farmer receives for his product. (83 Cong. Rec., May 23, 1938, pp. 7325, 7326).

On May 24, 1938, Congressman Biermann stated his amendment has been modified by omitting the term "processing" and including within the definition of employees engaged in agriculture, "individuals employed within the area of production, engaged in the handling, packing, storing, ginning, compressing, pasteurizing, drying, or canning of farm products and in making cheese and butter."

The debate on the amendment followed:

> Mr. BIERMANN. This bill is aimed at substandard labor conditions, and I submit that any Member of this House who is familiar with the kind of institution that this amendment I have offered is aimed at will agree with me when I say that substandard labor conditions do not exist in these institutions. In an amendment I inserted in the Record yesterday I included the word "processing." I call attention to the fact that in the pending amendment this word is stricken out. I struck it out for the reason that some Members thought that processing would include the making of cotton and wool into textiles, and rubber

into finished products, and a long list of things of that kind. The amendment I have offered includes only the first processing of things that come off the farm. The important point is that the farmer pays the bill for this processing. Those of us who come from dairy sections know that the cost of making butterfat into butter or milk into cheese is borne by the farmer. There is no contention about that; no argument. The Members from the South will agree that the man who raises the cotton pays for ginning the cotton.

When the cost of making butter, when the cost of making cheese, when the cost of ginning cotton increases, the farmer gets just so much less; and our contention and the contention of the farm organizations is that this bill designed to help labor should not be so worded that it puts another burden on the agriculture of this country.

Mr. COFFEE of Nebraska. This amendment would not take care of those employed in the handling of these seasonal crops outside of the area of production, would it?

Mr. BIERMANN. No.

Mr. COFFEE of Nebraska. In other words, the Orange amendment and the gentleman's amendment are not in conflict?

Mr. BIERMANN. No; they do not conflict.

Mr. THOMPSON of Illinois. May I ask the gentleman from Iowa whether his amendment would apply to a packing house located in Iowa and Illinois in the area of

production, which employs two or three hundred men?

Mr. BIERMANN. Speaking frankly, I think that is something that would have to be worked out. There are some packing houses in the State of Iowa that this amendment would apply to perhaps, but may I say that all over this country it has been recognized that there should be a labor differential between the large city and the little town.

Mr. WHITTINGTON. With respect to the question propounded by the gentleman from Illinois, may I remind the gentleman from Iowa that the word "packers" occurs in the present Bill, so there is no difference between the amendment proposed and the provisions of the Bill under consideration. As I understand the gentleman's amendment, it is merely a clarification of the definition of the word "employee" under the terms of the Act.

Mr. BIERMANN. And it is the kind of clarification the farm organizations want. The question to be decided in voting on this amendment is whether or not the farms of the United States are going to have their definition of "employee" as applied to agriculture or whether it is going to be written by people who have a city viewpoint. I do not find fault with the Committee on Labor, but I think whereas they are the experts who have knowledge regarding the big factories in Jersey City, New York City, and some of the other large cities, by the same token we who come from

the farm areas are best qualified to say what terms should apply to labor in those areas. I may say that not a single employee in any one of these factories has made an objection to this, so far as I know.

Mr. WHITTINGTON. It is simply to permit the farmer to get his material prepared for market.

Mr. BIERMANN. I want to read a couple of sentences from a letter I received this morning from Edward A. O'Neal, president of the Farm Bureau Federation, in which he sets out the desirability of writing into this Bill definitions such as proposed in my amendment. He states:

"We believe the bill should be clarified so as to assure the exemption of employees in such agriculture and horticulture industries in rural areas."

That is all my amendment takes in. He states further as follows:

"Failure to exempt these operations when performed in rural areas where conditions are so greatly different from the situation in large industrial and urban centers, will result in increased costs of processing and handling these products which will be reflected back in lower prices paid to farmers."

Mr. CRAWFORD. Does the gentleman's amendment exempt manufacturers of sugar beets in the rural areas?

Mr. BIERMANN. That is something that the Secretary will have to determine.

Mr. REILLY. Does the gentleman's amendment cover a pea-canning set-up that

is situated away from the farm on which the peas are grown?

Mr. BIERMANN. In a little town?

Mr. REILLY. In a little town; yes.

Mr. BIERMANN. But in the farm area?

Mr. REILLY. Yes.

Mr. BIERMANN. Yes; it does.

Mr. WADSWORTH. Let us look for a moment at the business of canning in a country canning factory. There are many of them in my district. I live within a mile of one and within 4 miles of another, and not to expose unduly any secret or make a remark of any particular importance, I sell sweet corn and peas to both of them.

The canning season starts in western New York, for example, first with early green peas around the first week or 10 days of June. The canning of peas goes on until the middle of July or toward the end of July, with the later varieties winding up the season. Then there is an off season of 10 days or 2 weeks before sweet corn comes in. The sweet corn canning season lasts clear through August and nearly all of September. It is followed in turn by tomatoes, carrots, and beets and spinach.

Now, all during that period that factory has to work very irregular hours. Just like the farmer, it is the slave of the sun and the weather. If we have about 2 days of unduly hot weather the heat suddenly ripens the crop more rapidly than the canning factory or the farmers have calculated. The result is it has to be rushed into the factory with all possible speed in

order that it may be canned in proper condition. While that is being done, which generally is not over once or twice in 10 days, the people in the factory work overtime. They probably do not work overtime more than once in a week or 10 days and seldom more than 2 or 3 hours of overtime.

This is a recognized custom in the trade. No one ever complains against it. The labor conditions are excellent; the whole thing is seasonal, and it is largely extra money to the operatives who get several weeks' work through the summer.

If that country canning factory is not exempt from the provisions of this bill, then all of its wage-and-hour limitations will be placed upon it, as well as the overtime provision, and when you increase the cost of processing fresh vegetables, you must expect one of two results. First, the factory must raise its price to the consumer—and I happen to know that they run on an exceedingly narrow margin—or else reduce the price paid to the farmer, and that is always what is done. Whenever you increase arbitrarily the cost of processing these fresh vegetables the farmer gets less per ton for them. I have been through it myself.

Mr. GILCHRIST. The amendment provides that out in the open country, where the handling, packing, or storing of agricultural commodities is done, there shall be certain exemptions from the provisions of the bill. We should have such exemptions so as to apply them to our creameries and

milk producers and cheese makers. Do not destroy these farm activities. There is no question of health involved in what is done out in the open country, because the conditions there are healthful. The tempo of work out there is slower than in cities.

There is no question involved as to the necessity for this amendment in the cities, and I would like to be for the bill if I can be. I deny the insinuation the gentleman from the city of Brooklyn made that we are trying to sabotage this bill. That gentleman has no interest in farms or farming. As was said by another, "There has not been a calf born in his district for 50 years." It is not the purpose to sabotage the bill, but if we do support the bill, it will be because it does not destroy our industries. The old bill provided for the things contained in this amendment. Why the change? The present bill takes care of the packing of apples, peaches, and pears, but it does not provide for such things as the canning of corn, the canning of tomatoes, or any of the other industries that the little villages depend upon and must depend upon. You folks are going to deny them that right if you vote down this amendment. I know what is in the substitute amendment which has been talked about here. It is merely a red herring drawn across the train. The 10 weeks spoken of in the committee substitute will not do. It will not rescue us from the situation that you are putting on us. It does

not provide for the things that my colleague from Iowa has provided in his amendment.

Mr. THOMPSON of Illinois. The amendment offered by the gentleman from Iowa, as well as section (g) of the committee amendment, is, in my opinion, entirely too far-reaching. I have no objection to exempting some of the small processors who do home curing and home canning from the provisions of this measure; but may I call the Committee's attention to the fact that in a large number of the smaller cities of our country, especially in the Middle West, there are many so-called small packing houses and canning plants. They are not so small after all. They employ two, three, of four hundred men and women and process various agricultural products. They kill pork, beef, lamb, and send it to the market, as well as can soups, vegetables, and fruits.

The canning plants in these small country towns do not do such canning for home consumption. They do it under contract for some of the large distributors of the country. The distributors from the large cities send out labels, and the commodities are then labeled and sent into interstate commerce to be consumed in the larger cities, and centers of population.

I think all will agree with me that these small canning plants and so-called small packing houses very frequently pay notoriously low wages and work their employees

long hours during the season. If we are going to have constructive wage-and-hour legislation, we should protect the people in the small communities, the people in these one-industry towns and villages, who are obliged to work in these factories, there being no other employment available. I hope, therefore, the Committee will reject the amendment offered by the gentleman from Iowa.

Mr. Chairman, in this connection, and assuming that the committee will reject the Biermann amendment, I ask the chairman of the Committee on Labor, the gentlewoman from New Jersey, what is meant by the committee language in section (g) "but not commercial processing?" That is not clear in my mind and I would like to have a better idea of the committee's interpretation of that language which is in parentheses.

Mrs. Norton. I may say to the gentleman it does not include making fertilizer or any of those commercially processed articles.

Mr. Thompson of Illinois. May I ask the gentlewoman this question: Where there is a small packing house or small canning plant engaged in packing or in canning, what do they do with the commodity? What do they do with the pork and beef they kill? What do they do with the vegetables they can? It must be for commercial consumption. They cannot eat

it all themselves, and generally speaking, these plants are not cooperatives.

Mrs. NORTON. I may say that at the proper time I intend to offer an amendment which I think will take care of the small packing industries (83 Cong. Rec., May 25, 1938, pp. 7401, 7402, 7403, 7405, 7406).

The Biermann amendment was adopted by a vote of 159 to 134 (83 Cong. Rec., May 25, 1938, pp. 7407, 7408).

4. *Specific proposals to exempt tobacco warehouses during the Congressional debate on S. 2475*

Senator Reynolds offered an amendment to exempt from the provisions of the Act "tobacco warehouses, their employers or employees." (81 Cong. Rec., July 30, 1937, p. 7878). The proposed amendment was rejected after the following debate:

Mr. REYNOLDS. Mr. President, I offer an amendment to the committee amendment, which I ask to have stated.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The LEGISLATIVE CLERK. At the proper place in the amendment reported by the committee it is proposed to insert the following:

"The provisions of this act shall not apply to tobacco warehouses, their employers or employees."

Mr. REYNOLDS. Mr. President, North Carolina is the greatest producer of tobacco

of any State in the Union. Of course, it is unnecessary for me to state that its grade of tobacco is considered the best of any in the world. In North Carolina we have approximately 57 tobacco warehouses. They are in actual operation only a few months out of each year. As a matter of fact, the farmer himself is the one who eventually pays the cost of operation of the warehouses; and I think these warehouses should be excluded from the provisions of the bill.

Mr. La Follette. Mr. President, will the Senator yield?

Mr. Reynolds. I yield.

Mr. La Follette. Did I correctly understand the Senator to say that employment in tobacco warehouses is seasonal in character?

Mr. Reynolds. As a matter of fact, they are open for only several months of the year. I should say they are open not more than from 3 to 4 months of the year. In eastern North Carolina, of course, the market season is different than that in western North Carolina, where is grown the superior burley quality; but the warehouses as a rule are closed about 9 months of the year.

Mr. La Follette. So the persons who are employed in these warehouses have only 3 or 4 months' employment during the year?

Mr. Reynolds. That is all. Perhaps one or two men are employed throughout the year merely in the capacity of watchmen or

repairmen; but, as a rule, the warehouses are in actual operation only during the selling season. In view of that fact I think they should be exempted from the provisions of the measure, because, after all, the small producer, the small farmer, is the one who actually pays the cost of operation.

Mr. LA FOLLETTE. How many persons are usually employed in such a warehouse?

Mr. REYNOLDS. That, of course, depends entirely upon the size of the warehouse. In North Carolina we have the largest tobacco warehouses in the world, but we also have quite a number of the smaller warehouses. They employ anywhere from 10 to 40 or 50 persons, according to the square-foot area and capacity of the warehouse. I recall that yesterday the Senate agreed to an amendment which gave protection to a number of agricultural enterprises. The amendment was offered by the Senator from Oregon [Mr. McNary]. I am of the opinion that warehouses which employ from 40 to 50 persons during the time they operate should be excluded from the provisions of the bill.

Mr. LAFOLLETTE. If the employment is absolutely seasonal in character——

Mr. REYNOLDS. Yes; it is seasonal in character.

Mr. LAFOLLETTE. While I do not believe the bill should be emasculated by a long series of exemptions, yet, if there is to be an exemption for seasonal work in relation to fruits and vegetables, I cannot see that

we are in a very good position to resist an amendment which is designed exclusively to provide an exception for a purely seasonal occupation in connection with the harvesting and marketing of tobacco.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. REYNOLDS. I yield to the Senator from Kentucky; and in yielding I wish to say that I have high hope that the Senator from Kentucky will be favorable to this amendment, because there are many tobacco warehouses in Kentucky which are in the same position as those in North Carolina.

Mr. BARKLEY. With respect to this amendment, I wish to say in a preliminary sense that I think the only rivalry existing between the States of North Carolina and Kentucky is in the production of tobacco. I think North Carolina produces more tobacco, but Kentucky produces better tobacco, so that we average up pretty well in the matter of tobacco.

Mr. REYNOLDS. Mr. President, I dislike to disagree with the Senator from Kentucky in that respect, but I must.

Mr. BARKLEY. With respect to this amendment, it is true that in the entire tobacco region—North Carolina, Tennessee, Virginia, Kentucky, and every other State where tobacco is produced—many warehouses which are devoted only to the receipt of tobacco brought in by the farmers during what they call the tobacco season—

which varies in different sections of the country, as the extent of the season also varies—operate only for a period of 3 or 4 months. Some of these warehouses are cooperative, and are owned by the farmers themselves. The farmers deliver their tobacco to the warehouses, and the tobacco is received by the organization of which the warehouses are part for resale to the private tobacco market, largely dominated by some very large tobacco interests that have their situs in the Senator's State and elsewhere.

There are certain tobacco warehouses, however, that are not seasonal. I am afraid the language of the Senator's amendment would include them all. There are some tobacco warehouses to which the tobacco is delivered during the tobacco season, but during almost the whole year the warehouse operators engage in the process of prizing and stripping and stemming. I do not think the Senator means to exempt warehouses of that sort that engage in more or less year-round activity.

Mr. REYNOLDS. No; that is not my intent, and I shall be very happy indeed to accept the suggestion of the Senator from Kentucky and provide whatever phraseology is necessary to be added to the amendment itself so that it will bring about the exemption of only those warehouses which are, as it might be said, engaged in seasonal work.

Mr. BARKLEY. I suggest to the Senator that at the end of his amendment there be

added the words "where the employment is seasonal in character."

Mr. REYNOLDS. I shall be very glad to accept those words as part of my amendment, Mr. President.

Mr. SMITH. Mr. President, is there not a clear definition of the functions of these warehouses in the names they bear? The Senator referred to a place where tobacco is prepared after it goes through the warehouse. Such places are called stemmeries; are they not?

Mr. REYNOLDS. Yes.

Mr. BARKLEY. That work is not altogether done in stemmeries. In some States a considerable part of the work goes on in the warehouses, and the buildings are referred to generally by the public as warehouses.

I ask the Senator from North Carolina if he will accept the language I have suggested?

Mr. REYNOLDS. I accept the language suggested by the Senator from Kentucky as part of my amendment.

Mr. BARKLEY. This situation applies to other States, as well as to the State of North Carolina.

Mr. GLASS. Mr. President, we have tobacco warehouses in Virginia, and I have never known one that has been engaged in the work of stripping and preparation of tobacco. That is done in the tobacco factories.

Mr. BARKLEY. Virginia produces a different type of tobacco from that produced in my State. In my State there are many of these establishments which are known as warehouses, and are referred to by the public as warehouses, in which the receipt of the tobacco is seasonal, but they continue the operation of prizing and preparation during a considerable part of the year.

The PRESIDING OFFICER. Is the Chair to understand that the Senator from North Carolina has accepted the modification of his amendment proposed by the Senator from Kentucky?

Mr. REYNOLDS. Yes; I accept that modification.

Mr. OVERTON. Mr. President, will the Senator from North Carolina yield?

Mr. REYNOLDS. I yield.

Mr. OVERTON. I desire to ask the Senator a question. I did not follow his amendment very closely. I think some modification has been made of his amendment. I wish to ask him whether cotton compresses and cotton warehouses are included in the amendment.

Mr. REYNOLDS. The intent of the amendment which I offered is merely to exclude tobacco warehouses that are engaged in what may be called a seasonal work, from 2 to 3 months in the year; and I accept as part of my amendment language suggested by the Senator from Kentucky [Mr. Barkley] to make that intent more clear.

Mr. OVERTON. Is there any difference in the duration of operation between a cotton warehouse and a tobacco warehouse?

Mr. REYNOLDS. I made mention only of tobacco warehouses.

Mr. OVERTON. Are not cotton compresses and cotton warehouses engaged in as seasonal work as tobacco warehouses?

Mr. REYNOLDS. I suppose they are.

Mr. OVERTON. Would the Senator have any objection to including in his amendment cotton compresses and cotton warehouses?

Mr. REYNOLDS. No; I should have no objection, because in that instance also the little producer or farmer pays the bill as I understand. I should have no objection to including in my amendment the language suggested by the Senator from Louisiana, because the work in the cotton warehouses and cotton compresses is purely seasonal.

Mr. OVERTON. Mr. President, yesterday the Senator from Oregon [Mr. McNary] offered an amendment, which was agreed to by the Senate, which exempted cotton ginning from the workweek provisions of the bill. It does not exempt cotton ginning, however, from the wage provisions of the bill. As I understand the amendment of the Senator from North Carolina, it will exempt the warehousing of tobacco altogether from the provisions of the bill.

Mr. REYNOLDS. It is eliminated entirely from the provisions of the bill.

Mr. OVERTON. I think the Senator from North Carolina will agree with me—at least I hope he will—that his amendment should include cotton ginning and baling, compressing and warehousing.

Mr. REYNOLDS. I shall be glad to include them in the provisions of my amendment.

Mr. OVERTON. Then I ask the clerk to report from the desk the amendment as modified.

The PRESIDING OFFICER. The Senator from Louisiana offers an amendment to the amendment of the Senator from North Carolina, and the clerk will report the amendment as modified.

The LEGISLATIVE CLERK. The amendment, as modified, reads as follows:

"The provisions of this act shall not apply to tobacco warehouses, cotton compresses, cotton warehouses, cotton ginning and baling, their employers or employees, where the employment is seasonal in character."

The PRESIDING OFFICER. Does the Senator from North Carolina accept the amendment of the Senator from Louisiana?

Mr. REYNOLDS. I accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina, as modified.

Mr. BLACK. Mr. President, I sincerely hope the amendment will be promptly voted down. In my judgment, there is no reason for continuing to make exemptions with reference to every kind of processing

that can be done. In the first place, the bill itself——

Mr. CONNALLY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Texas?

Mr. BLACK. I yield.

Mr. CONNALLY. Is it not entirely possible that all exemptions will be eliminated in conference?

Mr. BLACK. That may be entirely possible. I do not know what the House will do.

Mr. CONNALLY. The amendments which the Senate adopts will probably be deleted and eliminated in conference.

Mr. BARKLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Kentucky?

Mr. BLACK. I yield.

Mr. BARKLEY. Of course, this being a Senate bill, if it were agreed to by the House, the bill would not even be in conference.

* * * * * *

Mr. BLACK. Mr. President, I dislike very much to disagree with my good friend the Senator from North Carolina [Mr. Reynolds] and the senior Senator from Louisiana [Mr. Overton]. This bill, however, in its present form provides proper exemptions under a proper statement of facts relating to seasonal activities. It is my belief that, if by name we exempt particu-

lar businesses, the dictionary should be searched and the knowledge of each Senator should be searched with reference to the particular activities within his own State—and I may say that some of these businesses have relation to the section of the country from which I come—and simply put them all in at once.

Mr. BONE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Washington?

Mr. BLACK. I yield.

Mr. BONE. It becomes evident that if many more amendments of the character suggested are to be offered, it is going not only to come to a point where we might as well adopt a blanket amendment removing from the bill all seasonal employment, for if we eliminate some seasonal activities it would seem only reasonable that we should exempt from the provisions of the bill seasonal industries in all forms. I do not think that was the desire of the Senate or of the author of the bill.

* * * * *

Mr. OVERTON. I understood the argument heretofore made by the very able and brilliant Senator from Alabama, who has charge of this bill, to be that it was the serious and bona-fide purpose and intent of the committee to exempt agriculture and those engaged in agriculture.

Therefore, under the provisions of the bill as it now stands, unquestionably purely agricultural operations would be exempted. Take the cotton farmer or planter who employs labor to plant his cotton. The labor so employed does not come under the provisions of this bill. The labor he employs in picking cotton does not come under the provisions of the bill. The labor he employs in hauling his seed cotton to the gin does not come under the provisions of the bill. But the cotton farmer, when he has his cotton ginned, has to pay for the ginning. It is a burden that is imposed upon the farmer. It is as much a burden as is the picking of the cotton and the planting of the cotton and the hoeing of the cotton. It is a step in the process of getting his agricultural product to market, and the ginning of the cotton is just as essential to getting the cotton to market as is the picking of the cotton in the field. Why, then, should those who are engaged in the ginning of cotton, the cost of which operation is imposed directly upon the farmer, come under the provisions of this bill? Why should they not be regarded as others who are engaged in labor connected with agriculture and the marketing of agricultural products?

Mr. REYNOLDS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from North Carolina?

Mr. BLACK. I yield.

Mr. REYNOLDS. I merely wish to make the observation that the Senator's argument would apply equally to tobacco farming.

Mr. OVERTON. I have no doubt that that is absolutely correct; and the same argument applies to the compressing and to the baling of cotton. It seems to me, if the Senator in charge of the bill desires to exempt those engaged in agricultural pursuits, that he should accede to this amendment. I thank the Senator for yielding to me.

Mr. BLACK. Mr. President, if I may be permitted to speak, I was just about to say something about compresses. I do not understand that the compresses fit at all into the picture which has been drawn. I do not understand that it is necessary that compresses work long hours. They work throughout the year. They work when the cotton is brought to them. There is nothing perishable about the cotton. I can see no earthly reason why a cotton compress at a port should be exempted from the provisions of the bill.

Mr. REYNOLDS. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Sena- from Alabama yield to the Senator from North Carolina?

Mr. BLACK. I yield.

Mr. REYNOLDS. I should like to ask the Senator if he would object to the adoption of an amendment exempting tobacco warehouses.

Mr. BLACK. I may say to the Senator I do not think that this is the proper way to provide exemptions for activities if they are entitled to be exempt. I think it is not right to take some types of business as to which the suggestion happens to be made here and ask for an amendment to exclude them, unless we are going to do away with the other provisions which give authority to the board to consider seasonal activities. Knowing the Senator's belief in the value of legislation of this kind, I know that he does not want a single exemption to be made legislatively or under the action of a board that would require long hours to be worked unnecessarily or wages to be paid that are below a standard of decency and the necessity of the person and which will fit the case. Bearing that in mind, may I say to the Senator that we have provided in the bill a system which would really determine those facts on a basis of knowledge of the industry gained from the introduction of evidence. (81 Cong. Rec., July 30, 1937, pp. 7878–7880)

* * * * *

Mr. LA FOLLETTE. Mr. President, when the pending bill was under consideration in the committee the members of the committee fully realized that there were certain seasonal industries which of necessity would have to be excluded from the provisions of the bill. After careful study and after considering many of the amendments, some of them in identical form with those

now being offered by individual Senators, the majority of the committee came to the conclusion that it was impossible to provide specific exemptions for industries which were seasonal in character, and therefore entitled to exemption, without emasculating the provisions of the bill, and without extending the exemptions to many related activities which obviously should come within the purview of the proposed legislation.

Therefore, the committee provided that the board should have power to grant exemptions and to make exceptions for seasonal industries, after a proper showing had been made before the board that they were entitled to such exception or exemption.

The difficulty in attempting to write specific exemptions into the bill on the floor in the form of amendments is that in many instances the amendments will be so drawn that in their application they will grant exemptions to many operations to which, if the bill is to be enacted at all, it should apply. Take, for instance, the amendment which is now under construction. When the junior Senator from North Carolina offered the amendment I asked him whether employment in tobacco warehouses was seasonal in character, and he stated that it was.

However, the Senator from Kentucky pointed out the fact that many warehouses in his State employ their personnel upon a

yearly basis; and it was upon his suggestion that the Senator from North Carolina accepted the language providing that tobacco-warehouse employees shall be exempted from the provisions of this bill only in cases where their employment is of a seasonal character.

The senior Senator from Louisiana [Mr. Overton] suggested, and the Senator from North Carolina has accepted as part of his amendment, the exemption of cotton gins and cotton-compressing establishments. Of course I am not as familiar with the operation of the compressing plants, if I may use that term, in connection with cotton as are the Senators from cotton-producing States. Nevertheless, I have visited cotton-compressing establishments; and they operated, according to my observation, exactly as a manufacturing plant would operate. (81 Cong. Rec., July 30, 1937, p. 7883)

* * * * *

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from North Carolina, as modified, to the amendment reported by the committee in the nature of a substitute.

Mr. WALSH. Mr. President, I ask that the amendment be stated.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The CHIEF CLERK. At the proper point in the amendment reported by the committee it is proposed to insert the following:

"The provisions of this act shall not ap-

ply to tobacco warehouses, cotton compresses, cotton warehouses, cotton ginning and baling, their employers or employees, where the employment is seasonal in character."

Mr. DIETERICH. Mr. President, in response to the suggestion of the Senator from Alabama [Mr. Black] that he is willing to have all the amendments voted on at the same time, I will say that I do not think that will be satisfactory to Members of the Senate who are in good faith offering amendments, and who have no intention whatever of weakening or emasculating the bill.

* * * * *

Mr. BLACK. The Senator evidently was not present when I discussed this question some moments ago. The idea is, as I said then, that if there is going to be a special exemption from the proposed law of one type of activity, it should include, as a matter of justice, every other similar type of activity in the Nation. Therefore, I think that they should all be placed in one amendment, if that is to be done. (81 Cong. Rec., July 30, 1937, p. 7884)

* * * * *

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina.

Mr. HARRISON. Mr. President, let us have the amendment reported from the desk.

The PRESIDING OFFICER. The amendment will be read again.

The LEGISLATIVE CLERK. At the proper place in the bill it is proposed to insert the following:

"The provisions of this act shall not apply to tobacco warehouses, cotton compresses, cotton warehouses, cotton ginning and baling, their employers or employees, where the employment is seasonal in character."

Mr. WALSH. Mr. President, would the distinguished Senator from North Carolina be willing to incorporate in the amendment a provision to the effect that "if the board created under this act finds that the employment is seasonal", and so forth?

Mr. REYNOLDS. My understanding from the Senator's address is that he is in favor of the exemption of seasonal employment.

Mr. WALSH. I have said I am in favor of the exemption of seasonal employment, but I do not know whether or not the Senator's amendment relates strictly to seasonal employment. I do not want to have incorporated in the bill a provision classifying these occupations as seasonal unless they are seasonal.

Mr. REYNOLDS. They are seasonal.

Mr. WALSH. How many months a year do these employees work?

Mr. REYNOLDS. I should say 3 months would be the maximum amount of time.

Mr. WALSH. My objection is based on the viewpoint that all seasonal occupations ought to be exempted, especially from the

hours of labor provisions, but I have some doubt whether these particular occupations are seasonal. I will take the Senator's word. If he says that in no case do these employees work more than from 3 to 6 months a year, I will accept his judgment.

Mr. REYNOLDS. I am sure in most instances none of the workers are employed more than 3 months. Senators from those sections of the South involved know that these workers are engaged actually not more than 3 months.

Mr. WALSH. Unfortunately, I am not from that section of the country. May I ask the Senator from Alabama [Mr. Black] whether he is in accord with the statement of the Senator from North Carolina?

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. REYNOLDS. I yield.

Mr. BARKLEY. The amendment of the Senator from North Carolina as originally offered simply exempted tobacco workers from the operation of the provisions of the bill. I called to his attention that there are in my State some tobacco workers, that, while most of them are seasonal, yet some operate for the greater part of the year because they do other things than simply to receive tobacco at a warehouse. At my suggestion the language was amended to provide that where the operation of the workers is not seasonal in character, the

exemption should not apply. (81 Cong. Rec., July 30, 1937, p. 7886)

* * * * *

The PRESIDING OFFICER. The question is on agreeing to the modified amendment offered by the Senator from North Carolina [Mr. Reynolds] to the amendment reported by the committee in the nature of a substitute.

The modified amendment of Mr. Reynolds was as follows:

"The provisions of this act shall not apply to tobacco warehouses, cotton compresses, cotton warehouses, cotton ginning and baling, their employers or employees where the employment is seasonal in character."

Mr. HARRISON. I call for the yeas and nays.

* * * * *

The roll call resulted—yeas 40, nays 40.

* * * * *

The PRESIDING OFFICER. On this question the yeas are 40, the nays are 40. The modified amendment to the committee amendment is, therefore, rejected. (81 Cong. Rec., July 30, 1937, p. 7887).

Representative Barden offered an amendment in the House of Representatives to include in the definition of agriculture those persons employed in connection with the selling of tobacco in auction warehouses. This amendment was rejected

after the following discussion (82 Cong. Rec., December 17, 1937, p. 1783):

Mr. BARDEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

"Amendment offered by Mr. BARDEN: On page 4, line 18, after the last comma in line 18, insert 'and any person employed in connection with the selling of tobacco in auction warehouses.'"

Mr. BARDEN. Mr. Chairman, this amendment is designed to take care of the man who usually stays around the warehouse for the assistance of tobacco farmers who come in at all hours of the night, and day, too, as far as that is concerned, to unload their tobacco cargoes, a service heretofore rendered tobacco farmers.

Mr. COOLEY. Mr. Chairman, will the gentleman yield?

Mr. BARDEN. Yes.

Mr. COOLEY. Is it not a fact that the tobacco auction warehousemen employ this labor to assist the farmers in unloading their tobacco and placing it upon the market for the purpose of sale?

Mr. BARDEN. That is about the only use they have for them there.

Mr. COOLEY. And is it not entirely seasonal employment?

Mr. BARDEN. Absolutely.

Mr. COOLEY. And in the event an attempt is made to regulate the hours of these employees, I will ask the gentleman if it is not a fact that these warehousemen would not

be able to find ready labor to take the place of these men to aid farmers in placing their tobacco on the market.

Mr. BARDEN. That is true. The work only lasts 3 or 4 months, at the most, in the fall of the year.

Mr. FULLER. Mr. Chairman, will the gentleman yield?

Mr. BARDEN. I yield.

Mr. FULLER. What is the difference in exempting people of this class and the sawmill men working out in the country, hauling their logs into town and unloading them, who want to have them taken care of at night or the man who is hauling his wheat into town or his cotton, and wants to have it taken care of at night?

Mr. COOLEY. Mr. Chairman, will the gentleman yield to me to answer the gentleman from Arkansas?

Mr. BARDEN. Yes.

Mr. COOLEY. These laborers are employed in the warehouse, on the floor, to assist farmers, and have to be there at all hours of the night. That does not mean that they actually work all night, because the farmers bring their tobacco in at all hours of the night and even at 2 or 3 o'clock in the morning sometimes, and until the farmers arrive with their trucks and wagons these employees sleep. When the farmer arrives the floor manager calls out for labor to aid the farmer, and then they wake up and unload the tobacco and then may go back to sleep.

The CHAIRMAN. The time of the gentleman from North Carolina has expired. The question is on agreeing to the amendment offered by the gentleman from North Carolina.

The question was taken; and on a division (demanded by Mr. Cooley) there were—ayes 8, noes 38.

So the amendment was rejected.

After defeat of Representative Barden's amendment to exempt from both the wage and hours provisions of the Act employees employed in tobacco auction warehouses, Representatives Barden and Cooley jointly proposed to exempt such employees from the overtime provisions only. This amendment was passed by the House after the following discussion (82 Cong. Rec., December 17, 1937, pp. 1804–1806):

Mr. COOLEY. * * * I would like very much to have inserted in line 14, after the comma, this language: "or any person employed in connection with the selling of tobacco in auction warehouses."

This is on page 16, line 14, after the comma, insert the language: "or any person employed in connection with the sale of tobacco in auction warehouses."

I realize when I mention the words "auction warehouse" a large majority of the Members of the House have no idea of what an auction warehouse is.

Mrs. NORTON. Will the gentleman yield?

Mr. COOLEY. I yield to the gentlewoman from New Jersey.

Mrs. NORTON. The effect of the gentleman's amendment is to exempt them from the hours provision?

Mr. COOLEY. Yes. We were defeated when we attempted to exempt them from the wage provision.

In this connection, I may say that the entire tobacco crop of the State of Georgia is marketed by being sold in auction warehouses in the short space of 3 weeks. Can it be that the sponsors of this measure would undertake to regulate labor and wages in an industry that operates only 3 weeks out of 12 months? That is exactly what this bill will do.

In North Carolina the entire crop is marketed in about 3 months and the warehouses have to stay open 24 hours of the day.

Mr. LANZETTA. Will the gentleman yield?

Mr. COOLEY. I yield to the gentleman from New York.

Mr. LANZETTA. Is it not possible to hire more men to carry on the work?

Mr. COOLEY. No; because, in the first place, the labor is not available. In the second place, the tobacco is being brought into the market at every hour of the day and night.

* * * * * *

Mr. BARDEN. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

"Amendment offered by Mr. BARDEN: Page 16, line 14, after the comma, insert 'or any person employed in connection with the sale of tobacco in auction warehouses.'" (82 Cong. Rec., December 17, 1937, pp. 1804–1805.)

* * * * *

Mr. BARDEN. Mr. Chairman, I want to take about half a minute to say that this is the amendment the gentleman from North Carolina [Mr. Cooley] just discussed and which the committee chairman agreed to accept. As I understand it, there is no objection to the amendment.

* * * * *

The CHAIRMAN. * * *

All debate on this amendment has closed, under the rules of the House, there having been 5 minutes of debate for and 5 minutes' debate against the proposition.

The question is on the amendment offered by the gentleman from North Carolina [Mr. Barden].

The question was taken; and on a division (demanded by Mr. Barden) there were—ayes 79, noes 37.

So the amendment was agreed to. (82 Cong. Rec., December 17, 1937, p. 1806.)

Shortly after it passed the amendment exempting employees of tobacco auction warehouses from

the overtime provisions of the Act, the House voted to recommit the bill to the Committee on Labor (82 Cong. Rec., December 17, 1937, pp. 1834–1835). The bill reported back to the House after recommitment omitted this exemption (S. 2475, as reported in House of Representatives, Report No. 2182, 75th Cong., 3d sess., April 21, 1938).

On May 24, 1938, Representative Cooley once again proposed an exemption for employees of tobacco auction warehouses from both the wage and hours provisions. This amendment was rejected by the House after the following discussion (83 Cong. Rec., May 24, 1938, pp. 7408–7410):

> Mr. COOLEY. Mr. Chairman, I offer the following amendment which I send to the desk.
>
> The Clerk read as follows:
>
> "Amendment offered by Mr. Cooley: Page 50, line 20, after the word 'farmer' insert 'all persons employed in connection with the sale of leaf tobacco in auction warehouses.'"
>
> Mr. COOLEY. Mr. Chairman, when the last wage and hour bill was before the House at the extraordinary session last fall, an amendment similar to the amendment that I have just offered was accepted by the chairman of the Committee on Labor. I hope that the amendment may be accepted by the Labor Committee at the present time, and if not, that it may be adopted by

the House. It is applicable only to those persons employed in auction warehouses in which leaf tobacco is sold. I cannot in the brief space of time at my disposal attempt to discuss in detail the operations of an auction warehouse but I call the attention of Members to the fact that auction warehouses are operated for the benefit of the farmers and in auction warehouses the farmer sells his tobacco. In the State of Georgia the entire leaf-tobacco crop is marketed in the brief space of 3 weeks. In North Carolina, Virginia, and in other sections of the country it takes longer, perhaps 3 or 4 months, but the point I wish to impress upon the House is that it is necessary for warehouses to remain open 24 hours each day. The farmers bring their tobacco in at every hour of the night, and these employees are permitted to sleep and loaf on the job until a farmer arrives with his tobacco. The tobacco is then taken from the truck or wagon and placed on the auction warehouse floor. There is not sufficient labor available at all times to operate on regular shifts of 8 hours each.

Mr. SIROVICH. Mr. Chairman, will the the gentleman yield?

Mr. COOLEY. I yield.

Mr. SIROVICH. Who pays the wages of the man at the warehouse, the owner of the warehouse or the farmer who brings the tobacco?

Mr. COOLEY. The man who owns the warehouse pays the wages of the person as-

sisting the farmer in unloading his tobacco.

Mr. SIROVICH. And the owner of the warehouse gets a commission on the sale of the tobacco.

Mr. COOLEY. The farmer pays the warehouseman a commission for services, which includes the services of the auctioneer.

Mr. SIROVICH. Why should the warehousemen be exempted?

Mr. COOLEY. The fact is that if these people are not made available by the warehouseman the farmer must unload his own tobacco and perform his own labor. The warehousemen heretofore have rendered that service for the farmer, and I am afraid that if they are put under this bill they will cease furnishing the service. Many of the farmers come in as early as 2, 3, or 4 o'clock in the morning, tired and exhausted; and if they do not have these laborers to help them unload their trucks or wagons, they will have to do it themselves. I hope the Members of the House will see the wisdom of putting this exemption in this bill.

Mr. CREAL. Mr. Chairman, will the gentleman yield?

Mr. COOLEY. I yield.

Mr. CREAL. Technically, does the gentleman think that that is an operation that becomes a part of interstate commerce? Does that tobacco partake of the nature of interstate commerce until it has reached the floor and been sold? Is not the warehouseman before that time the agent of the seller?

Mr. COOLEY. I am inclined to think the gentleman is correct; but to remove all question of doubt, I think this exemption should be included in the bill.

Mr. CREAL. Mr. Chairman, will the gentleman yield further?

Mr. COOLEY. I yield.

Mr. CREAL. The warehouseman charges 75 cents a hundred for handling this tobacco, and part of the service he renders is to help the farmer unload. If through the operation of this bill that charge were increased, would not the discrimination be against the farmer just the same as it is in the case of freight rates?

Mr. COOLEY. He would have to pay the bill or perform the labor himself. In all sincerity, I impress upon the House the desirability of this amendment. I certainly hope it will be adopted as it was before. It is applicable only to a very few people. It will work a great hardship upon the farmers if they are forced to place their own tobacco on the floors of these auction warehouses.

[Here the gavel fell.]

Mr. COCHRAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the purpose of this legislation is not only to prove a minimum wage and maximum hours, but also to put more people to work; put more people to work is as important as wages and hours.

Mr. WHITE of Idaho. Mr. Chairman, will the gentleman yield at that point?

Mr. COCHRAN. No; I refuse to yield at the moment.

Mr. Chairman, the purpose of this amendment is to keep additional people from going to work. Here is a concrete example where if this legislation is put into effect, those who operate the tobacco warehouses will not be able to keep people on the job 24 hours a day, as the gentleman who offered the amendment admitted they do. He says they sleep there and that when the farmer comes he wakes them up and they help the farmer unload his trucks. What we want to do by this legislation is to require that when they work 24 hours a day they have three sets of employees, split their work up into three shifts of 8 hours each.

Mr. COOLEY. Mr. Chairman, will the gentleman yield?

Mr. COCHRAN. I yield, because I referred to the gentleman's speech.

Mr. COOLEY. I think the gentleman misunderstood me. I made the statement that the warehouses of necessity remained open 24 hours of the day and in many instances the warehousemen kept their employees there. They were not actually working through the 24 hours. If a farmer came in at 2 o'clock in the morning, he would have to call on the warehouseman to help him unload.

Mr. COCHRAN. I understood the gentleman perfectly. They keep their warehouses open 24 hours a day and only want to em-

ploy one set of men. The retailer keeps his place open, the manufacturer keeps his place open, and they will be required to meet the provisions of the bill. Why not your tobacco men? I repeat, what we want to do is to put more people to work in this country, just as much as we desire to have a minimum wage and maximum hours; that is what we are trying to do and propose to do. * * * (83 Cong. Rec., May 24, 1938, pp. 7408–7409)

* * * * * *

Mrs. NORTON. Mr. Chairman, I move that all debate on this amendment do now close.

The motion was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. Cooley].

The amendment was rejected. (83 Cong. Rec., May 24, 1938, p. 7410)

A final attempt to secure an exemption for tobacco *auction* warehouses (from the hours provisions only) was made by Representative Cooley shortly afterwards. This amendment was also rejected by the House after the following discussion (83 Cong. Rec., May 24, 1938, pp. 7428–7429):

Mr. COOLEY. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The Clerk read as follows:

"Amendment offered by Mr. Cooley: Page 53, line 24, at the end of section 5, insert '*Provided, however*, That nothing in this section shall apply to persons em-

ployed in connection with the marketing of tobacco in auction warehouses."

Mr. COOLEY. Mr. Chairman, this is another effort on my part to exempt the employees in auction warehouses from the hour provisions of this bill. The other amendment I offered a moment ago would have had the effect of exempting these employees from both the wage and hour provisions, but as I pointed out when I was addressing the House at that time, auction warehouses remain open 24 hours a day. This does not mean that these employees actually work 24 hours a day, but the warehouses remain open that long.

May I again impress on the House the fact that in Georgia the entire tobacco crop is marketed in 3 weeks. It is necessary to use a large number of employees to unload the tobacco for the farmers when it is brought into the tobacco warehouse. I cannot understand why this amendment should be objectionable to the Labor Committee.

Frankly, I believe the Biermann amendment is sufficiently broad to include these employees. I do not believe they are engaged in interstate commerce. I likewise believe they are handlers of agricultural commodities and would come under the provisions of that amendment. But by introducing this amendment I seek to clarify the situation so that we may very definitely know that these laborers who assist the farmers in unloading their tobacco shall

be exempted from the hour provisions of this act. I fear unless they are exempted definitely from the provisions that the warehousemen will cease to render this very valuable service to the tobacco farmers of our State.

Mr. CREAL. Will the gentleman yield?

Mr. COOLEY. I yield to the gentleman from Kentucky.

Mr. CREAL. Is it not true that these men to which the gentleman refers are in most cases the sons of farmers, the tobacco raisers themselves, who live in the immediate community, and these men work there unloading that tobacco for their neighbor farmers?

Mr. COOLEY. In many instances, I may say to the gentleman, the warehousemen employ farm boys to work in the warehouse and assist the farmers in placing their tobacco.

Mr. PATRICK. Will the gentleman yield?

Mr. COOLEY. I yield to the gentleman from Alabama.

Mr. PATRICK. The gentleman will agree with me that the purpose of this law is to distribute labor and work more evenly over the Nation?

Mr. COOLEY. That is true.

Mr. PATRICK. If the gentleman's amendment is accepted, will it not tend to defeat the very purposes of this bill?

Mr. COOLEY. Absolutely not.

[Here the gavel fell.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. Cooley].

The amendment was rejected.

5. *Specific proposals to change the "area of production" exemption during Congressional consideration of the Fair Labor Standards Amendments of 1949*

The bill reported by the House Committee on Education and Labor during consideration of the Fair Labor Standards Amendments of 1949 (H. R. 3190, reported in H. Rept. No. 267, 81st Cong., 1st sess., March 16, 1949), like the bill reported by the Senate Committee on Labor and Public Welfare (S. 653, as reported in Senate Report No. 640, 81st Cong., 1st sess., July 8, 1948), limited the "area of production" exemption (from both the wage and hours provisions of the Act) for employees engaged in the specified operations, to an overtime exemption only.

A proposal to transfer authority to define "area of production" from the Secretary of Labor to the Secretary of Agriculture was proposed initially in the Lucas bill (H. R. 4272) but was later incorporated in H. R. 5856, the bill which was passed by the House (95 Cong. Rec., August 11, 1949, 11287). The bill passed by the House made no changes in the "area of production" exemption other than to incorporate the Lucas proposal transferring authority to define "area of production" from the Secretary of Labor to the Secretary of Agriculture.

While the Senate committee had recommended that the minimum wage portion of the "area of production" exemption be eliminated and that the exemption be restricted to an overtime exemption, it retracted this proposal in a committee amendment made on the floor of the Senate and proposed instead that no changes be made in the "area of production" exemption. During Senate discussion of the later committee recommendation, the problems inherent in the statute and the House proposal to transfer authority to define the "area of production" were commented upon as follows:

> Mr. PEPPER. It is true, as the Senator says, that from the very beginning it has been most difficult for the wage and hour Administrator to define the area of production. It was originally intended that the area of production meant generally the part of a neighborhood in which production occurred; but when he undertook to define it as a legal matter, the Administrator ran into all sorts of difficulties, for example, as to what should be the size of the town, what should be the distance a commodity would be transported, and so forth. What I am saying is that that has been the law since 1938. We thought we could make some progress in extending the minimum wage to those workers. Frankly, we did not feel that they were getting what they were entitled to receive. However, as I started to say, at the committee meeting

this morning the committee determined to retract from that provision in the pending bill the language which would have extended minimum-wage coverage to those who are now within the area of production as defined by the Administrator in the handling and processing of the commodities which we have described.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. ELLENDER. Does the Senator's proposal leave the law exactly as it is now written?

Mr. PEPPER. It does. Whatever complaint there is on the part of the Senator from Mississippi relates to the law as it has been in effect since 1938. We are not changing it. What I now propose to do, Mr. President, is to offer a committee amendment which would eliminate the provision in the pending bill which would have made a change in the present law.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. ELLENDER. Before doing that, will the Senator tell us whether the committee took into consideration the fact that the area of production should be defined by the Secretary of Agriculture or some other person, rather than by the Administrator?

Mr. PEPPER. I thank the Senator for asking that question. The committee did take that into consideration. The matter

was also taken into consideration in the House of Representatives. There is a letter in the Record to the chairman of the House Committee on Labor and Public Welfare, from the Secretary of Agriculture, pointing out why he does not think it proper to vest in him that jurisdiction and that duty. There is also a letter to the same effect to the Senate committee, from the Secretary of Agriculture. I have a copy of the letter which was written to the chairman of the House Committee on Labor and Public Welfare. I do not have the letter which is coming to the Senate committee from the Secretary of Agriculture, which is substantially the same as this letter, except that I understand it contains an additional paragraph stating why he should not have this jurisdiction. The letter which I have reads as follows:

UNITED STATES DEPARTMENT
OF AGRICULTURE,
WASHINGTON, *June 17, 1949.*

Hon. JOHN LESINSKI,
Chairman, Committee on Education and Labor, House of Representatives,
Washington, D. C.

DEAR MR. LESINSKI: I understand that it is proposed in a bill to amend the Fair Labor Standards Act (H. R. 4272), which has been referred to the Committee on Education and Labor, that authority to define the term "area of production" as used in certain exemptions in that law re-

lating to the handling and processing of agricultural and horticultural commodities, be given to the Secretary of Agriculture. Because this Department would be directly affected by such a change in the law, and believes that there are certain difficulties inherent in such a proposal, I am taking the liberty of making known to you my views on the matter.

I do not think I need to set forth in detail the difficulties of defining the term "area of production." This Department is aware of these difficulties, having been consulted by the Secretary of Labor prior to the issuance by the Administrator of the Wage and Hour Division of the present regulations under the Fair Labor Standards Act dealing with this matter. The subject has been one of fairly extensive discussion and correspondence between the Department of Labor and the Department of Agriculture. As a result of these discussions, I am in agreement with the Administrator that the "area of production" concept is inherently inequitable and that corrective action should be taken by Congress to eliminate these inequities in the interest of sound public policy. Your committee has acted wisely, in my judgment, in recommending legislation which explicitly specifies exempt activities instead of imposing upon the Administrator the responsibility for defining a concept which is very difficult to define satisfactorily.

If, however, the Congress should decide to retain the "area of production" concept in the Fair Labor Standards Act, I am convinced that the proposal to transfer the problem of defining the term to the Secretary of Agriculture would not alleviate the present difficulties. For these difficulties revolve around inequities inherent in the very use of the term itself, since employees who are doing precisely the same things are exempt if they do them in the "area of production" but not exempt if they do them somewhere else. Furthermore, such action would create new uncertainties and problems since authority in the administration of the Fair Labor Standards Act with respect to such employees would be divided between two agencies. Conflicts of interpretation would be very likely to develop, such as experience has shown to be common when two agencies share jurisdiction over the same field. At the very least, such divided jurisdiction would add to the expenses of administration and would slow up the processes of advising individuals as to their status under the act. Accordingly, I would not favor any such transfer of authority with respect to the definition of "area of production" as is proposed in H. R. 4272.

Sincerely,

CHARLES F. BRANNAN,
Secretary.

Before I yield to the able Senator from Mississippi, let me say that the whole

theory upon which the committee brings this bill to the Senate at the present time, stripped, as it is, almost to the very bone and relieved of almost all controversies, is in the hope that we may get this bill through this session of the Congress. There are many Senators and many citizens who want to extend coverage, who want to amend exemptions so that they will be less restrictive than at the present time. There are undoubtedly inequities in the area-of-production concept, and perhaps in other aspects of the law, but it is a complicated, long-drawn-out, and rather tedious process to perfect the law in a short time. That is the reason why we who wanted to extend the coverage, reduce exemptions, and raise the wage even higher, have been willing to subordinate our feeling about the matter to the sentiment of our colleagues, and that is why we bring to the Senate a bill unanimously supported by the subcommittee and by the full committee, with the Senators from Ohio and Missouri, in addition to the Senator from New Jersey, reserving the right with respect to one amendment to address themselves to it. I do not mean that Senators have foreclosed themselves, but the bill we bring here comes with the unanimous support of the subcommittee and of the full committee.

I want to say to the senior Senator from Mississippi that the area-of-production matter is a very difficult one. It may be that it should be somewhat clarified, and it

may be that in the next session of the Congress we may go into the whole question of clarifying difficulties of that character. But we are very earnestly hopeful that we can get a sample bill through this session of the Congress.

Mr. EASTLAND. Mr. President, will the Senator yield?

Mr. PEPPER. I yield to the Senator from Mississippi.

Mr. EASTLAND. Is that provision retained in the bill?

Mr. PEPPER. Yes.

Mr. EASTLAND. It was condemned by the Secretary of Agriculture in the letter which the Senator read.

Mr. PEPPER. That is correct. It has been difficult of administration. It does contain, in equities [*sic.*] affecting both sides, no doubt inequities to the employer as well as to the employee, and it is no doubt a subject which should receive consideration by the Congress.

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. STENNIS. In view of the difficulties which the Senator has himself pointed out, and which have also been pointed out by the Secretary of Agriculture, what is the argument in favor of retaining any reference to the area of production? On what is it based?

Mr. PEPPER. It is based on this: At the present time there is a complete exemption

in the processing of agricultural products in the area of production because it was generally considered that that is the neighborhood of the farm, as it were, a sort of a community institution. If we did not have the area of production and did not in some other way affect the matter, there would be, perhaps a large commercial enterprise hundreds of miles away which might not be subject to any part of the Fair Labor Standards Act, or, to turn it around the other way, there might be an enterprise a few hundred yards from where the farmer grew his commodity, and it might be subject to it.

Mr. EASTLAND. Mr. President, will the Senator yield?

Mr. PEPPER. Will the Senator permit me to finish? It has always been felt by the advocates of this legislation that everyone who processes an agricultural commodity, no matter how large a processor he may be or how much of a commercial enterprise it may be, should be subject to the provisions of the law.

Let us consider the Campbell Soup Co., in Camden, N. J., having 10,000 employees. It is hard to understand why the Campbell Soup Co. should have an exemption from the minimum-wage law and the maximum-hour law when it is a big commercial manufacturing institution. On the other hand, if there were a gin somewhere in a community where cotton was grown, and it was more or less of a community enterprise, it

was felt that it should not be subject to the Fair Labor Standards Act.

Mr. EASTLAND. Mr. President, will the Senator yield?

Mr. PEPPER. I yield to the senior Senator from Mississippi.

Mr. EASTLAND. As a matter of fact, today, are not such gins, in a locality where cotton is grown within a few hundred yards of the gin, subject to the law?

Mr. PEPPER. I believe the size of the town in which the gin is located is one of the criteria. But of course that is an administrative regulation, due, no doubt, to the fact that it is generally assumed that not very much cotton is grown right around a large city. It is generally supposed that the area of production is out in the country, in rural sections, that the community institutions are serving them, and that they ought not to be considered as industrial operations. I believe, as the Secretary of Agriculture says, that there are inequities both ways. On the other hand, we may deny the workers the right to get a minimum wage and overtime pay in the Campbell Soup Co., although [*sic.*] it is a 10,000-employee institution.

Mr. STENNIS. Mr. President, will the Senator from Florida yield?

Mr. PEPPER. I yield to the junior Senator from Mississippi.

Mr. STENNIS. Does the committee make any recommendation with respect to coping with this problem?

Mr. PEPPER. The committee has not done so, except that it was our general idea that we might at the next session of the Congress take up the question of coverage and go more thoroughly into it. I can say as a member of the committee and a member of the subcommittee—and I am chairman of the subcommittee handling the subject now before the Senate—that we shall be very glad to consider anything the able Senators from Mississippi and other Senators may wish to submit on that subject.

Mr. STENNIS. The Senator is dissatisfied, is he not, with the present situation, but does not have any immediate remedy?

Mr. PEPPER. That is correct; we do not at the present time have an immediate remedy.

My attention has been called to the fact that the letter addressed to Elbert D. Thomas, chairman of the Committee on Labor and Public Welfare of the Senate, has now arrived, and I have it in my hand. I believe it is substantially identical with the letter to Hon. John Lesinski of the House Committee on Labor, with the exception of the paragraphs at the end of the letter, which read as follows:

"In addition to the considerations set forth above, I should also like to point out that the proposal is inconsistent with one of the basic principles defined by the Hoover Commission on the Organization of the Executive Branch of the Government, namely: That the agencies and functions of

the Government should be grouped according to major purposes. It would be inconsistent with the principles of sound administration for the Department of Agriculture to have functions under a labor statute, just as it would be inconsistent for the Department of Labor to have functions under statutes relating to agriculture.

Accordingly I do not favor any such transfer of authority with respect to the definition of "area of production" as is proposed in H. R. 5856."

This letter is dated August 29, 1949, and is from the Secretary of Agriculture. I offer the letter for the Record.

The PRESIDING OFFICER (Mr. THYE in the chair). Is there objection?

There being no objection, the letter was ordered to be printed in the Record, * * *.

* * * * *

Mr. EASTLAND. Mr. President, will the Senator from Florida yield?

Mr. PEPPER. I yield to the senior Senator from Mississippi.

Mr. EASTLAND. I understand that the Senator thinks small community enterprises, such as cotton gins, which gin cotton in the community where the cotton is grown, should be exempted from the provisions of the act?

Mr. PEPPER. That has been the general theory upon which the act has proceeded. I do not care to commit myself unequivocally on what we might agree to in the future, but I have always felt that the

size of the institution, the number of employees, and perhaps the volume of business done, might well have something to do with the question. Generally speaking, a small community institution has been outside the scope of coverage. If we could work out some way by which we would exempt the small community institution, and extend coverage to those institutions which are larger in character and industrial in nature, I should be very much pleased.

* * * * * *

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. PEPPER. I yield for a question.

Mr. STENNIS. I should like to ask the Senator a question with respect to the "area of production" matter we have been discussing. The adoption of the amendment the Senator now offers, on the general subject of processing plants, would not preclude an amendment from the floor on the matter of area of production; would it?

Mr. PEPPER. It would not. It is not intended that floor amendments should be precluded. We are now in the period of committee amendments, and I am offering the amendment as a committee amendment.

Mr. TAFT. Mr. President, I understand that if this amendment is adopted it will restore the complete exemption of cotton gins.

Mr. PEPPER. Just as they were.

Mr. TAFT. And country elevators?

Mr. PEPPER. That is correct.

Mr. EASTLAND. May I ask the Senator from Ohio a question?

Mr. PEPPER. Let me say, first, that there are two amendments now offered that are primarily affected by the amendment I am presenting. One is the amendment offered by the junior Senator from Mississippi and the Senators associated with him. Another is the amendment offered by the Senator from Maryland [Mr. O'Conor] which would do just exactly what the amendment I offer proposes, namely, restore the law to what it was in the 1938 act with respect to area of production. Then there was an amendment by the Senator from Iowa [Mr. Gillette] which I think was intended to restrict the language of the bill which the committee has presently presented to the Senate.

Mr. TAFT. How about the amendment of the Senator from Nebraska?

Mr. PEPPER. The Senator from Nebraska [Mr. Butler] presented an amendment with respect to grain elevators. I conferred with him this morning about the action of the committee, and I understand the Senator is satisfied with the committee amendment, so that meets his question. He did not like the language of Senate bill 653 with respect to grain elevators.

I now feel that with the exception of the matter suggested by the Senators from Mississippi, and the matter of the definition of "area of production" given by the

> Secretary of Agriculture, the committee takes care of the amendments I have described. So, Mr. President, I do not know of any opposition to the amendment proposed by the bill to the present law. We are simply keeping the law in its present form. (95 Cong. Rec., Aug. 29, 1949, pp. 12436–12438)

The bill passed by the Senate made no changes in the "area of production" exemption (95 Cong. Rec., August 31, 1949, p. 12583). The Conference Report (H. Rept. No. 1453; 95 Cong. Rec. 14925–14928) agreed to by both houses on October 18, 1947 (95 Cong. Rec. 14868, 14925) adopted the Senate version and also left the "area of production" exemption unchanged. The Statement by the Managers on the Part of the House in regard to the "area of production" provisions was as follows:

> "Area of production": The House bill amended Section 13 (a) (10) of the act by transferring the authority to define "area of production" from the Administrator to the Secretary of Agriculture. The exemption was renumbered Section 13 (a) (11). The Senate amendment made no change in existing law. The conference agreement follows the Senate amendment in this respect and leaves the present law unchanged, and retains the numbering of the present Section 13 (a) (10).

The Senate discussion of the Conference agreement on the "area of production" exemption is as follows:

> Mr. FULBRIGHT. Let me ask one other question, if the Senator will yield: What did the conference committee do with regard to the exemption of cotton gins and warehouses and compresses, which amendment was offered by the Senator from Mississippi [Mr. Stennis], I believe, and was adopted by the Senate?
>
> Mr. PEPPER. On that matter, essentially, the Senate conferees receded at the insistence of the House conferees, and the Senate amendment was deleted by the conferees, leaving the law as it is today—in other words, as the Wage-Hour Administrator says, in the case of cotton gins exempting about 90 percent of the cotton gins which are in the area of production. In other words, the processing of agricultural commodities which occurs within the area of production is at the present time exempt from the minimum-wage and maximum-hours provisions of the law.
>
> The matter of the area of production is a very difficult one. It has been difficult of administration. The first definition laid down by the Wage and Hour Administrator was eliminated by the courts. Definitions which were subsequently devised have not, themselves, been altogether satisfactory.
>
> There has been a general desire, both by those who favor the extension of this law

and by those who did not favor the law at all, to have the definition modified and improved. I think it is the consensus of opinion of the conferees that they hope the Wage and Hour Administrator will constantly endeavor to improve the definition of "area of production," and, especially in the case of cotton, that he will apply it as liberally as possible.

Mr. FULBRIGHT. In regard to this matter, did the conferees make any statement relative to what the Wage and Hour Administrator should do?

Mr. PEPPER. What I have just stated was the general opinion. I do not recall any express statement to that effect; but it was the general opinion in the conference that that should be done.

Mr. FULBRIGHT. Did the conferees also leave out the amendment of the House of Representatives which provided that the Secretary of Agriculture should define the "area of production"?

Mr. PEPPER. The House conferees receded from that provision, for it was felt by the entire conference, after consideration, that it would be better to have the administration of the "area of production" provision in the Wage and Hour Administration, where it has been, rather than to divide the authority in this field between the Wage and Hour Administration, under the Secretary of Labor, and the Secretary of Agriculture. We were influenced in that decision by a letter communicated to

both the Senate and the House committees by the Secretary of Agriculture, saying that he did not think it would be appropriate for him to have the jurisdiction, that he did not welcome it, and that he had collaborated with, and would continue to collaborate with, the Secretary of Labor in working out this matter.

Mr. FULBRIGHT. Does not the Senator think it significant that both Houses took action designed to change the present method, and indicating that a change was desired by both Houses, but that they approached it from a different angle, one amendment showing dissatisfaction on the part of the House with the present arrangement, and the other—the Senate amendment—specifically giving exemption to those in counties where cotton is produced. For example, in the largest cotton-producing county in the United States, namely, Mississippi County, Ark., which is the most prolific cotton-producing county among those of comparable area, the town of Blytheville is not exempt. As the Senator from Florida knows, any warehouse in a town having a population of more than 2,500 persons is not exempt. So warehouses in that town are not exempt.

So the act which the court has not held invalid has not brought about an exemption in the case of that particular industry.

It seems to me now that the conferees have acted, something more definite should be said on the part of the managers for the Senate, so as to direct, so far as they can

do so, the Wage and Hour Administrator to do something in this field, since both Houses of Congress have evidenced dissatisfaction with what is being done.

As a matter of fact, this item just misses being subject to a point of order, because the two Houses approached it in a somewhat different way, and the amendments are not to the same section of the bill.

Mr. PEPPER. I am glad the Senator has clearly used the word "miss" there, because it is a very clear miss.

Mr. FULBRIGHT. Yes; it just misses.

Mr. PEPPER. The House had done nothing with respect to the matter in which the Senate is now interested, namely, cotton gins and compresses, as regards an exemption. The Senate did adopt an amendment providing an exemption for those operations. The House had agreed to a general administrative provision to the effect that the Secretary of Agriculture, instead of the Secretary of Labor or the Wage-Hour Administrator, should administer the area of production; but there was no mention of area of production in the Senate amendment, as I recall. So the two amendments were not the same at all.

Mr. FULBRIGHT. The Senator from Florida may not be acquainted with this matter; but an amendment similar to the one adopted in the House was prepared—and I joined in it; and the junior Senator from Mississippi was to offer it, and I was the cosponsor of it. After the bill came here,

an amendment was offered and adopted in the Senate, and we, thinking of course that the amendment would receive favorable attention by the conferees, did not press the other amendment. But the objective of both amendments is exactly the same. The House amendment was designed to achieve the same purpose, namely, to get a reasonable definition of "area of production," which would have some application to this industry. That was the whole reason for the amendment. I think the Senator will find in the legislative history that those interested in cotton were the ones who then supported the House amendment.

So the real objective of both amendments was the same; but the two amendments were offered as two different methods of achieving it.

Mr. PEPPER. Mr. President, I am quite sympathetic with the Senator from Arkansas and with other Senators who share his view about the "area of production" definition and about having it gradually improved in the course of administration. I think all of us are sympathetic in that connection, as regards having that done. But obviously we shall have to struggle with that in the years ahead, and shall have to struggle with the question of whether we shall allow the "area of production" provision at all, or whether it will be withdrawn totally, or whether the "area of production" will be exempt.

But the fact that there have been so few suits questioning the rules that have been adopted in recent years, as contrasted with the situation in former years, indicates that progress is being made. We hope they will continue to improve the definition.

Mr. FULBRIGHT. Mr. President, I am sorry the conferees did not accept the Senate amendment. The Senate adopted it, of course.

Mr. PEPPER. The Senate did adopt it; but when we got into conference, those interested in other agricultural commodities felt that those commodities were being discriminated against; and the House conferees would not agree to this item.

The VICE PRESIDENT. The question is on agreeing to the conference report.

The report was agreed to. (95 Cong. Rec., October 18, 1949, pp. 14869-14870.)